



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

THOMAS DUNSTON

LIBRARY

HE
3013
.1870
R32

A

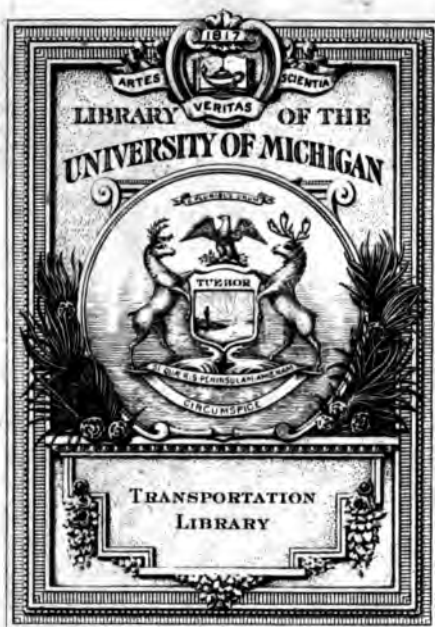
756,484

DUPL

THE LAW
OF
RAILWAY COMPANIES
AS CARRIERS.

By J. H. HEDMAN.

Price 3s. 6d.



A TREATISE
ON THE LAW AFFECTING
THE DUTIES AND OBLIGATIONS
OF
RAILWAY COMPANIES
AS CARRIERS OF GOODS AND LIVE STOCK.

JOSEPH H. REDMAN, ESQ.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.



LONDON:
GEORGE SMITH & Co., 27, CHANCERY LANE.
1870.

Library
HE
301.3
.1870
R32

23116

Col. M. Folt Esq

with the authors

very kind regards

23 Feb 1871

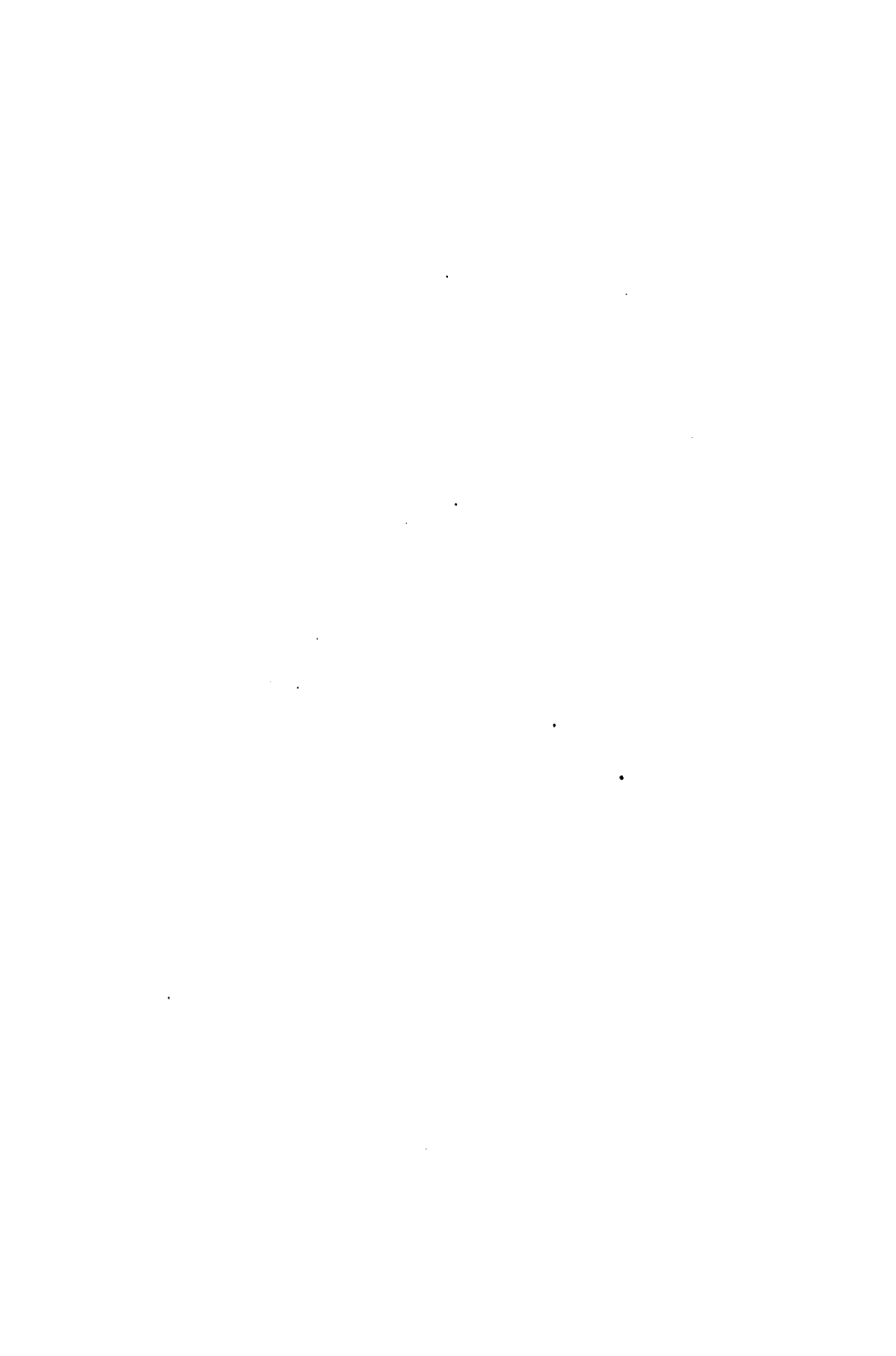
LONDON:
PRINTED BY WILLIAM BOWDEN, 23, RED LION STREET,
HOLBORN, W.C.



P R E F A C E .

THE author's object in the present treatise has been to produce an *epitome* clear, concise, and complete. Embodying the conclusions of the ablest text writers and the results of the latest decisions of the courts, he hopes it may prove an acceptable compendium to members of the profession. At the same time, by avoiding as much as possible technical phraseology, he has endeavoured to give such a statement of existing law as may be easily comprehended by non-professional readers. It has not been thought necessary to burden the text with long strings of cases. The latest and leading cases have been cited to support a doctrine ; on reference to them previous decisions on the point will generally be found collected.

8, *Serjeant's Inn, Temple,*
November, 1870.



CONTENTS.

	PAGE.
CHAP. I.—GENERAL OUTLINE OF THE LIABILITY OF RAIL- WAY COMPANIES	1
II.—THE COMMENCEMENT OF A RAILWAY COMPANY'S LIABILITY	
SECT. 1.— <i>Delivery to the Company</i>	7
2.— <i>Receiving</i>	19
3.— <i>Bye-Laws</i>	29
4.— <i>Special Contracts</i>	30
5.— <i>Tolls</i>	42
III.—THE TRANSIT.	
SECT. 1.— <i>Duty of the Company during the transit</i> ...	64
2.— <i>Stoppage in transitu</i>	69
IV.—TERMINATION OF A RAILWAY COMPANY'S LIA- BILITY.	
SECT. 1.— <i>Delivery to the consignee</i>	72
2.— <i>Consignee's refusal to receive</i>	79
3.— <i>Delivery within a reasonable time</i>	81
4.— <i>Non-delivery</i>	85
5.— <i>Lien</i>	89
V.—DAMAGES.	
SECT. 1.— <i>Actual loss</i>	93
2.— <i>Consequential loss</i>	95
APPENDIX.	
1 Wm. 4, c. 68.	102
17 & 18 Vic., c. 81.	108
31 & 32 Vic., c. 119, ss. 14, 16, 17, 18.	115
Mode of Computing Tolls (<i>Note to page 43</i>).	117

TABLE OF CASES.

- Aldridge v. Great Western R. C., 6, 38, 40.
Allday v. _____ 41.
Alston v. Herring, 66.
Anderson v. London and North Western R. C., 11, 17
Atty.-General v. Great Western R. C., 60.
_____ v. Harley, 11.
- Barnes v. Marshall, 42.
Barrett v. Gt. Northern R. C., 60.
Batson v. Donovan, 22, 89.
Baxendale v. Bristol and Exeter R. C., 26.
— — v. Eastern Counties R. C., 60.
— — v. Great Western R. C., 27, 51, 52, 59.
— — v. Hart, 7, 13, 14.
— — v. London and South Western R. C., 59.
— — v. North Devon R. C., 56.
- Beal v. South Devon R. C., 36.
Beck v. Evans, 65.
Behrens v. Great Northern R. C., 11, 15.
Bennett v. Manchester, Sheffield, &c., R. C., 60.
Bernstein v. Baxendale, 10, 11, 16, 17.
Blakemore v. Lancashire and Yorkshire R. C., 97.
Bodenham v. Bennett, 16.
Boys v. Pink, 11, 17.
Bradley v. Waterhouse, 88.
Brandt v. Bowlby, 94.
Bridson v. Great Northern R. C., 83.
British Columbia Saw Mill Company v. Nettleship, 94.
Brunt v. Midland R. C., 12, 16.
Butt v. Great Western R. C., 12, 15.
Butterworth v. Brownlow, 88.

TABLE OF CASES.

vii

- Collard v. South Eastern R. C., 95.
Coombs v. Bristol and Exeter R. C., 101.
Cooper v. London and South Western R. C., 27.
Cox v. London and North Western R. C., 89.
Crouch v. Great Northern R. C., 24, 99.
—— v. Great Western R. C., 80.
—— v. London and North Western R. C., 19, 24, 86.
- Davey v. Mason, 7, 11.
Davidson v. Gwynne, 65.
Davies v. Peek, 100.
Donahoe v. London and North Western R. C., 21, 82, 85.
Duff v. Budd, 74.
- Farrant v. Barnes, 23.
Field v. Newport, &c., R. C., 91.
Flowers v. South Eastern R. C., 12.
Forward v. Pittard, 75.
Fowles v. Great Western R. C., 72.
- Gabay v. Lloyd, 66.
Galway v. Holloway, 8.
Garnett v. Willan, 16.
Garton v. Bristol and Exeter R. C., 26, 41, 51, 60.
—— v. Great Western R. C., 56.
Garside v. Trent Navigation Company, 79.
Gatliffe v. Bourne, 74.
Gee v. Lancashire and Yorkshire R. C., 98.
Gilbart v. Dale, 85.
Great Northern R. C. v. Taylor, 82, 83.
Great Western R. C. v. Redmayne, 97.
—— v. Sutton, 59.
Green v. St. Katherine Dock Company, 91.
Gregory v. West Midland R. C., 34.
Griffiths v. Lee, 85.
- Hadley v. Baxendale, 97.
—— v. Clarke, 83.
Hales v. London and North Western R. C., 96.
Hamlin v. Great Northern R. C., 100.
Hart v. Baxendale, 12, 22.

- Harris v. Cockermouth, &c., R. C., 52, 57.
 Harrison v. Loudon Brighton, &c., R. C., 37.
 Hawkes v. Smith, 86.
 Heane v. Gorton, 23.
 Hearn v. London and South Western R. C., 16.
 Heugh v. London and North Western R. C., 79.
 Higginbotham v. Great Northern R. C., 89.
 Hinton v. Dibdin, 15.
 Hodgman v. West Midland R. C., 19.
 Hudson v. Baxendale, 65, 80.
 Hyde v. Trent and Mersey Navigation Company, 87.

 Jackson v. Nichols, 91.
 Johnson v. Midland R. C., 20, 21, 22.

 Kinnear v. Midland R. C., 92.
 Kirby v. Great Western R. C., 32, 33.

 Lane v. Cotton, 22.
 Leck v. Maestaer, 87.
 Le Conteur v. London and South Western R. C., 3, 10.
 Leigh v. Smith, 8.
 Le Peintur v. South Eastern R. C.
 Lewis v. Great Western R. C., 32, 36.
 Lickbarrow v. Mason, 69.
 Lipford v. Charlotte R. C., 82.
 Lloyd v. Waterford and Limerick R. C., 38.
 London and North Western R. C. v. Bartlett, 77.
 London and South Western R. C. v. Myers, 43.
 Lord v. Midland R. C., 35.
 Lovett v. Hobbs, 8.
 Lythgoe v. East Anglia R. . 95.

 Macku v. London and South Western R. C., 7, 78.
 Mayhew v. Nelson, 12.
 McCance v. London, and North Western R. C., 32, 94.
 McCourt v. _____ 8.
 McKean v. McIver, 2.
 McManus v. Lancashire and Yorkshire R. C., 40.
 Mead v. South Eastern R. C., 101.
 Moffatt v. Great Western, R. C., 9, 72.

- Moore v. Wilson, 101.
Munster v. South Eastern R. C., 22.
Muschamp v. Lancaster and Preston R. C., 5.
Mytton v. Midland R. C., 11.

Nicholls v. Lefevre, 70.
Nicholson v. Great Western R. C., 50.
North v. London and North Western R. C., 91.
Northfield Iron and Steel Company, *in re*, 90.

Oakley v. Portsmouth, etc., Steam Packet Company, 87.
O'Hanlan v. Great Western R. C., 94.
Oppenheim v. Russell, 91.
Owen v. Burnett, 12, 17.
Oxlade v. North Eastern R. C., 21, 49.

Palmer v. London and South Western R. C., 27, 34.
Pardington v. South Wales R. C., 34, 35.
Parker v. Great Western R. C., 44.
Pegler v. Monmouthshire Railway and Canal Company, 62.
Peck v. North Staffordshire R. C., 4, 32, 40.
Piancini v. London and South Western R. C., 11.
Pickford v. Grand Junction R. C., 22, 42, 96.
Prior v. Wilson, 96, 97.

Ransome v. Eastern Counties R. C., 46, 57.
Raphael v. Pickford, 82.
Rice v. Baxendale, 94.
Richardson v. Goss, 76.
Robinson v. Dunmore, 81.
——— v. Great Western R. C., 38, 48.
——— v. South Western R. C., 19.
Rooth v. North Eastern R. C., 39, 73.

Sargent v. Morris, 101.
Scarfe v. Morgan, 92.
Scothorn v. South Staffordshire R. C., 67.
Shepherd v. Bristol and Exeter R. C., 77.
Sheridan v. New Quay Company, 68.
Siffken v. Wray, 70.
Skinner v. Upshaw, 90.
Simons'v. Great Western R. C., 32, 33, 35, 40.

- Sleat v. Fagg, 16, 88.
Slim v. Great Northern R. C., 8.
Stoessinger v. South Eastern R. C., 11.
Storr v. Crowley, 74.
Strong v. Natally, 76.
Stuart v. Crawley, 89.
Sutton v. Gt. Western R. C., 44, 59.
—— v. South Eastern R. C., 59.
Swain v. Shepherd, 101.
- Taylor v. Plummer, 67.
Treadwin v. Great Eastern R. C., 12, 17.
Trent Navigation Company v. Ward, 88.
Turner v. South Eastern R. C., 33.
- Walker v. Jackson, 88.
Wallace v. Southern and Western R. C. of Ireland, 84.
Webb, *in re*, 76.
Webber v. Great Western R. C., 5.
Wentworth v. Outhwaite, 70.
West v. London and North Western R. C., 28.
White v. Great Western R. C., 35.
Whitehead v. Anderson, 71.
Wilby v. West Cornwall R. C., 6.
Wilson v. Lancashire and Yorkshire R. C., 98.
Woodger v. Great Western R. C., 98.
Wren v. Eastern Counties R. C., 82.
Wyld v. Pickford, 11, 17, 22.
- Yorke v. Greenhaugh, 90.
- Zunz v. South Eastern R. C., 33.

ADDENDA ET CORRIGENDA.

Page 26, note, for p. 41, read p. 42.

„ 29, line 8 from top, for refuted, read refused.

„ „ line 19 from top, for 26 and 27 Vic. c. 93, read 26 and 27 Vic. c. 92.

„ 34, line 5 from bottom add “and it was held in *Palmer v. London and South Western R. C.*, 35 L. J., C. P. 289 (diss. Willes and Keating, J. J.,) that cases previously decided under the Act are not binding on the court in the same way that precedents in law are binding.”

„ 38, line 2 from bottom add “in order however to enable a company to rely on an alternative contract offered to the customer, it must appear that such alternative was itself reasonable. A company cannot offer the choice of two unreasonable conditions, and then rely on the one actually chosen (*Lloyd v. Waterford and Limerick R. C.*, 15 Ir., C. L. 37.)”

„ 79, line 16 from top, add *Hetgk v. London and North Western R. C.*, 39 L. J., Ex. 48 ; L. R. 5, Ex. 51.

„ 101, line 5 from top after 510, add “unless the consignee had contracted with the company for the carriage of the goods (*Mead v. South Eastern R. C.*, 18 W. R., 735).

THE LAW
AFFECTING
RAILWAY COMPANIES
AS
CARRIERS OF GOODS AND LIVE STOCK.

CHAPTER I.

*General Outline of the Liability of Railway
Companies.*

The liability of railway companies arises partly under the customary or common law of England, and is partly defined by statute. Unless otherwise provided by the special act constituting them, railway companies carrying goods are common carriers. As common carriers they become at common law (in the absence of contract with the customer limiting their liability) insurers of goods entrusted to them for transit, against all loss or damage

CAP. I.

Common law
liability.

CAP. I. not occasioned by the act of God, or the king's enemies (*McKean v. McIver*, 18 L. T., N. S. 410), or resulting from the negligence or fraud of the customer. By the phrase "act of God" is meant natural accidents—such as lightnings, earthquakes, floods, tempests, snow storms, and the like; "the king's enemies" refers only to enemies with whom the reigning sovereign is at open war, and not to internal depredators, as thieves, rioters, or insurgents. (*Jones Bail* 104, 105).

The Carriers' Act, 1 Wm. IV., c. 68.

By 1 Wm. IV., c. 68 (The Carriers' Act), this general liability is somewhat restricted; and as to the articles enumerated in the 1st section, above the value of £10, railway companies will not be liable for their loss or injury unless certain steps, therein prescribed, are taken by the customer at the time of delivering the goods to the company (see p. 10). The provisions of this act are however confined to carriers by land; so that if a railway company undertakes the through transit of goods to their destination, partly by railroad and partly by sea, it will not protect them against the loss of any such articles if the loss occurs during the sea transit; but if the loss occurs during the conveyance by land the act will protect the company, notwithstanding the convey-

ance was partly by sea. (*Le Conteur v. Lond.* CAP. I.
and *South Western R. C.*, 35 L. J., Q. B. 40). —

By 17 & 18. Vic., c. 31 (The Railway and Canal Traffic Act, 1834), s. 7, their general liability is still further restricted, and they will not be responsible for damages above certain stated amounts for injury caused to horses, cattle, sheep, or pigs, unless at the time of delivery to the company their respective higher values are declared by the customer (see p. 17). The provisions of the whole of the Railway and Canal Traffic Act, so far as they are applicable, are now extended to traffic carried on by railway companies by means of steam vessels. (31 & 32 Vic., c. 119, s. 16).

A yet further limitation as to sea transit has been placed within the power of companies by 31 & 32 Vic., c. 119, where they undertake the conveyance of goods and live stock, partly by railway and partly by sea. Section 14 enacts, "that where a company by through booking contracts to carry any animals, luggage, or goods from place to place partly by railway and partly by sea, or partly by canal and partly by sea, *a condition* exempting the company from any loss or damage which may arise during the carriage of such

The Railway
and Canal
Traffic Act,
17 & 18 Vic.,
c. 31, s. 7.

Liability
during sea
transit, 31 &
32 Vic., c.
119, s. 14.

CAP. I. — animals, luggage, or goods by sea from the act of God, the king's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, shall, if published in a conspicuous manner in the office where such through booking is effected, and if printed in a legible manner on the receipt or freight note which the company gives for such animals, luggage, or goods, be valid as part of the contract between the consignor of such animals, luggage, or goods, and the company, in the same manner as if the company had signed and delivered to the consignor a bill of lading containing such condition."

Liability
limited by
special con-
tract.

In the case of all goods not within either of the three above mentioned statutes, railway companies are, in the absence of special contracts, insurers of their safe delivery. But companies may, apart from these statutes, limit their common law liability by special contracts, containing just and reasonable conditions and signed by the customer. In *Peck v. North Staffordshire R. C.*, 32 L.J. Q.B. 241 (now the leading case on the subject of special contracts), the Lord Chancellor (Westbury), said "no general notice given by a

railway company shall be valid in law for the purpose of limiting the common law liability of the company as carriers. Such common law liability may be limited by such conditions as the court or a judge [before whom any question relating thereto shall be tried] shall determine to be just and reasonable, but with this proviso, that any such condition shall be embodied in a special contract in writing [or printed] between the company and the owner or person delivering the goods to the company, and which contract in writing shall be signed by such owner or person" (p. 269).

CAP. I.

The liability of companies extends not merely over their own line, but if they take goods to be delivered to parties distant from their own terminus, delivering them to other carriers or railway companies to be forwarded, the receiving company will be liable for the whole distance, even if the loss or injury does not happen on their own line (*Webber v. Gt. Western R. C.*, 34 L. J., Ex. 170; *Muschamp v. Lancaster and Preston Junction R. C.*, 10 L. J., Ex. 460); and it makes no difference that the goods are, at the direction of the consignor, to be conveyed part of the way by a different route to that which would

Liability
continues to
the end of
the journey.

CAP. I. have been adopted if no such direction had
— been given (*Wilby v. West Cornwall R. Co.*,
27 L. J., Ex. 181). But this liability will
not apply when the company have by one of
the conditions of their contract of carriage
stipulated for an exemption from it. (*Aldridge*
v. Gt. Western R. Co., 33 L. J., C. P. 73).

CHAPTER II.

The commencement of a Railway Company's Liability.

DELIVERY TO THE COMPANY.—A railway company's liability as common carriers attaches immediately upon the delivery of the goods to them for the purpose of carriage. But there must, to attach this liability, be an actual delivery to them or to some servant, agent, or other person authorized, or placed by them in a position to hold himself out to the public as authorized to act on their behalf for this purpose (*Story Bail*, s. 532). As a rule, the officials at a railway station, the company's draymen, where such are employed to collect or usually collect goods (*Davey v. Mason*, 1 C. & M. 45; *Baxendale v. Hart*, 6 Ex. 769), the servants of another carrier engaged by the company under a sub-contract to deliver and collect goods (*Macku v. Lond. & South Western Railway Company*, 2 Ex. 415), a person accustomed to book for the company, although the servant

CAP. II.
SEC. I.Liability
attaches on
delivery.To whom de-
livery maybe
made.

CAP. II.
SEC. I.
—

of, and deriving his authority from another and separate carrier who undertakes the transit during a stage of the journey anterior to the goods actually coming into the company's possession (*M'Court v. Lond & North Western R. C.*, 3 Ir. R. C. L. 107 & 402), would be considered persons to whom a good delivery might be made, unless the customer knew that the delivery was in defiance of the course of business of the company ; as for instance, where a company notified that they would not carry cattle unless a ticket were attached signed by their clerk, it was held that a porter had not authority to receive without giving such signed tickets, and that when he did so the company were not liable for the loss of cattle so received from parties acquainted with the notice (*Slim v. Great Northern R. C.*, 2 C. L. Rep. 864. s.c. 14 C. B. 647).

Knowledge
and consent
of company
necessary to
a delivery.

The acquiescence of the company is necessary to a delivery. It is no delivery if the goods are merely left at their booking office (*Galway v. Holloway*, 1 *Ld. Raym.*, 46) or placed on one of their vehicles without the knowledge or consent of them or their servants (*Lovett v. Hobbs*, 2 Show 127 ; *Leigh v. Smith*, 1 C. & P. 640).

The delivery must be for the purpose of being carried in due course. If the company receive goods into their warehouse to be forwarded according to the future orders of the owners, and the goods are lost by fire before such orders are received, or the goods are put in transit, they are not liable as common carriers but as warehousemen, which is a much more limited responsibility (*Story Bail*, s. 537). But if the goods are of a description which the company only carry by particular trains and at certain intervals, and they are brought to the receiving house before the company are ready to carry, if the company receive them, though it be to warehouse until they can be put in transit, it will be such a delivery to them for the purposes of immediate carriage as to make them liable as common carriers for any loss which may happen before the transit actually commences (*Moffat v. Great Western R. C.*, 15 L. T. (N. S.) 630).

CAP II.
SEC. I.

Delivery must be for immediate transit and not for warehousing,

Unless the company warehouse them for their own convenience

It is not necessary to constitute a delivery that the goods should be entered on any way bill or freight list, this being a mere *ex parte* document, and is not like a bill of lading, a contract between the parties (*Chitty & Temple*, on Carriers, p. 30).

Goods need not be entered on a way bill.

CAP. II. In certain cases preliminary steps are to be
SEC. I. taken by the customer at the time of deliver-
 ing the goods to attach responsibility to a
 railway company. If the requirements of
 "The Carriers Act" (1 Wm. IV., c. 68) are
 not complied with, the company will be wholly
 irresponsible for loss of goods above the value
 of £10, mentioned in the 1st section; and if
 the 7th section of "The Railway and Canal
 Traffic Act" (17 & 18 Vic. c. 31) is not com-
 plied with, the company will only be subject
 to a limited liability for injury to the animals
 therein mentioned.

Conditions
 precedent to
 liability at-
 taching to a
 company in
 certain cases

Non-res-
 ponsibility
 for loss of
 certain
 goods above
 the value of
 £10, unless
 declared.
 Carriers'
 Act, 1 Wm.
 IV., c. 68.

By the Carriers' Act it is provided that a
 company carrying by land shall not be liable
 for loss of or injury to :—

Gold or silver coins of this realm or of any
 foreign state ;

Gold or silver in a manufactured or un-
 manufactured state ;

Precious stones ;

Watches, clocks, or time-pieces of any des-
 cription ; (this would include a chro-
 nometer, *Le Conteur v. Lond. & South
 Western R. C.*, 35 L. J., Q. B. 40).

Trinkets ; (articles the main object of
 which is ornament, though of some
 use, are trinkets ; per Cockburn C. J.
Bernstein v. Bazendale, 28 L. J., C. P.

267; thus, shirt pins, bracelets, rings, brooches, *Ibid*, and ivory fans, *Atty.-Genl. v. Harley*, 7 L. J. Ch. 31, are trinkets; but not an eye-glass and gold chain, *Davey v. Mason*, Car. & M. 45, nor German silver fuzee boxes, *Bernstein v. Baxendale, supra*).

Bills; (an accepted but not drawn bill is not within the Act, *Stoessinger v. South Eastern R. C.*, 23 L. J., Q. B. 293).

Notes of the Governor and Company of the Banks of England, Scotland, and Ireland, respectively, or of any other bank in Great Britain or Ireland;

Orders, notes, or securities for money;

English or foreign stamps;

Maps; (*Wyld v. Pickford*, 8 M. & W. 443)

Writings; (*Piancini v. Lond. & South Western R. C.*, 10 Ex. 793).

Paintings; (and artist's pencil sketches, *Mytton v. Midland R. C.*, 28 L. J., Ex. 385).

Engravings; (*Boys v. Pink*, 8 C. & P. 361).

Pictures; (*Behrens v. Great Northern R. C.*, 30 L. J., Ex. 153, and their frames, *Anderson v. Lond. & North Western R. C.*, 39 L. J., Ex. 55.)

Gold or silver plate or plated articles;

CAP. II.
SEC. I.

Glass ; (includes looking-glasses, *Owen v. Burnett*, 2 C. & M. 357).

China ;

Silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials ; (includes silk hose, *Hart v. Baxendale*, 6 Ex. 769 ; elastic silk webb, *Brunt v. Midland R. C.*, 33 L. J., Ex. 187 ; a truss of silk, *Butt v. Great Western R. C.*, 20 L. J., C. P. 241 ; and a silk dress made up for wearing, *Flowers v. South Eastern R. C.*, 16 L.T.(N.S.) 329).

Furs ; (does not include hat bodies made partly of fur and partly of wool, *Mayhew v. Nelson*, 6 Car. and P. 58).

Lace ; (*Treadwin v. Gt. Eastern R. C.*, 37 L. J., C. P. 83. Machine made lace is exempted from the Act by 28 and 29 Vic. c. 94).

When the value of such articles shall exceed the sum of £10, unless at the time of delivery thereof for the purpose of being carried—whether such delivery be at the company's usual receiving office, or to one of their servants on the road or elsewhere—the person sending or delivering the same shall :—

1. Declare their nature and value ; and
2. Pay or engage to pay an extra charge

(sec. 1), made according to a list which must be affixed in the booking office of the company before it can be demanded. (Sec. 2). The omission of the company to exhibit this list of extra charges in their booking office merely deprives them of the right to make an extra charge,* they will still be exempt from liability if the nature and value are not declared, for nothing frees the customer from the duty of making the declaration at the

CAP. II.
SEC. I.
—

*This is denied in a very able and authoritative work (Roscoe's *Nisi Prius* Evidence, 12th edition, 1870, p. 549), where it is asserted that if no notice has been affixed, under section 2, the carrier is not protected, though no declaration of the nature and value is made by the customer. With all deference to the learned editors of that work I dissent from such a statement of the law. The object of the statute is primarily that the carrier may be informed of the valuable nature of the contents of parcels entrusted to him, in order to adopt those extra precautions in the transit which the case may require; its secondary object to give the carrier increased remuneration for his extra trouble; but that his charges may not be arbitrary the list must be exhibited in a conspicuous part of his receiving office. The exhibition of that list is a condition precedent to his demanding extra charge, and not to his exemption from liability. Such at least seems to me the only fair conclusion—and it has been adopted by all writers on the law of carriers—to draw from reading the preamble of the act, the remark of Maule J. during the argument in *Baxendale v. Hart* (21 L.J. Ex. 123) coupled with the judgment of Patterson J. in that case.

CAP. II.
SEC. I.

time of delivery. Patterson J. in *Baxendale v. Hart* (21 L. J. Ex. 123) said, "We think that the Act of Parliament requires *the person who sends the goods to take the first step* by giving that information to the carrier which he alone can give, and that if the sender does not take that first step, then he cannot maintain this action by the force of the first section, which expressly says that the carrier shall not be liable unless the declaration is made. Such declaration, when made, will lead to other consequences; the carrier will know what he is to have more, according to the tariff which he has stuck up in his office; if that sum is paid and the goods are lost, then of course he would be liable; on the other hand if he refuses to give a receipt, as provided by the statute, or has omitted to comply with any provision of that kind on his part to be performed, he would lose the protection given by the act."

If, after the declaration has been made, the company receive the parcel without demanding the increased rate, they receive it as insurers of its safe conveyance; for it is their duty to demand, not that of the customer to tender unasked, the increased rate; and the same results follow after a declaration where the company are unable to make any

increased charges through their failure to exhibit a list thereof. (*Behrens v. Gt. Northern R. C.*, 30 L. J., Ex. 153).

CAP. II.
SEC. I.

The company must give a receipt when required.

The company are bound after the increased rate has been paid or agreed to be paid, to give, if required by the sender, a receipt for the package, acknowledging the same to have been insured. If such receipt be not given when required the company lose the advantage of the act, and remain liable as at common law, and must refund the increased charge. (Sec. 3).

In the absence of a declaration by the customer of the nature and value of the goods the company will not be liable even for loss occasioned by the gross negligence of themselves or their servants (*Hinton v. Dibdin*, 2 Q. B. 646), but they will be for the felonious acts of their own servants (section 8), when the felonious act happens through the gross negligence of the company, not otherwise. (*Butt v. Gt. Western R. C.*, 11 C. B. 153). And to render the company liable it is necessary to give such evidence as would convict one or more of their servants of felony. But the company will be liable if their gross negligence amount to a misfeasance inconsistent with their contract to convey, as for instance, not carrying or forwarding the goods

If the goods are not declared, company not liable for gross negligence,

Unless amounting to a misfeasance.

CAP. II. (Garnett v. Willan, 5 B. & Ald. 53); or forwarding them otherwise than agreed upon
 SEC. I. (Sleat v. Fagg, 5 B. & Ald. 342); or sending them beyond the place of destination (Bodenham v. Bennett, 4 Price 41). So they will be liable for loss occasioned by delay in forwarding, as the protection of the statute extends only to loss or injury caused to the articles themselves, and not to consequential loss or damage resulting from detention. (Hearn v. Lond. & South Western R. C., 10 Ex. 793).

Meaning of
 "loss"
 within the
 statute.

In a case of doubt, the question whether an article is one of those mentioned in section 1 is a question of fact for a jury. (Brunt v. Midland R. C., 33 L. J., Ex. 187). If the contents of a parcel or package exceeding £10 in value are of a miscellaneous character, consisting partly of articles within, and partly of articles not within the act, the company is released from all liability in respect of the former, but their common law liability remains the same in respect of the latter

Contents of a parcel of a mixed character.

Accessories. (Bernstein v. Baxendale, supra); but if articles not within the act are attached and merely accessory to other articles within the act (as the frame of a picture), the company will not be liable for their loss. (Anderson

v. *Lond. & North Western R. C.*, 39 L. J. Ex. 55). And if a box or packing case containing only articles within the act be lost, its value cannot be recovered (*Wyld v. Pickford, supra*); but if it contains articles some within and some not, the value of it, as well as of the articles not within the act may be recovered. (*Treadwin v. Gt. Eastern R. C.*; *Bernstein v. Baxendale, supra*).

CAP. II.
SEC. I.
—

Express notice must be given at the time of delivery. It is not sufficient that the company have a conviction as to the contents of the parcel (*Boys v. Pink*, 8 C. & P. 363), nor that its appearance or something written on it, indicates that it is of value; thus a plaintiff was held not entitled to recover for the loss of a looking glass, upon the case of which were the words "plate glass; looking glass—keep this edge upwards," but no actual declaration was made or increased value paid. (*Owen v. Burnett*, 2 Cr. and M. 353).

Section 7 of the Railway and Canal Traffic Act, which, as well as all other provisions of the same act, is, so far as applicable in cases where the company carries on a communication between any towns or ports by means of steam vessels, extended by 31 & 32 Vic. c. 119, s. 16 (being in substance the same as

The Railway
and Canal
Traffic Act.

CAP. II. 26 & 27 Vic., 92, s. 31), "to the steam ves-
 SEC. I. sels and to the traffic carried on thereby,"

Limited lia-
 bility of com-
 pany for in-
 jury to live
 stock, unless
 the real
 value is de-
 clared.

provides that a railway company shall not be liable for injury occasioned by the neglect or default of such company or its servants, beyond £50 for any horse, £15 per head for any neat cattle, £2 per head for any sheep or pigs, unless the sender shall *at the time of delivery* have declared the same to be respectively of higher value. When the value has been declared the company may demand an increased rate for carriage, such increased rate to be notified in the same manner as the increased rates under the Carriers' Act. It is not however compulsory upon the company to give at the request of the sender a receipt, as is provided for by sec. 3 of the Carriers' Act.

It has been decided that the protection of this statute is not confined to neglects and defaults after the relation of carrier and customer has been completely established; and the real value of animals above the statuteable amount cannot be recovered unless the declaration is made before the injury happens, though it happens before the receipt by the railway company is complete, and in consequence of the negligence of the company

(*Hodgman v. West Midland R. C.*, 33 L. J. Q. B. 233, affirmed on appeal, 35 L. J. Q. B. 85). CAP. II.
SEC. I.

If the customer choose to forward animals of greater value than the statuteable amounts, without the precaution of declaring their value and paying an extra rate, he can do so, and the company cannot compel him to do otherwise, notwithstanding they have information that the animals are of a much higher value, even though that information be communicated by the customer himself, if there was no intention that it should operate as a declaration within the meaning of the statute. To entitle the company to the increased rate the declaration must be made with an intention that it should so operate. (*Robinson v. South Western R. C.*, 34 L. J. C. P. 234).

Customer
not bound to
declare, and
pay the extra
charge.

RECEIVING.—As common carriers railway companies are under a legal obligation to receive from all persons and carry all such goods as they are empowered, profess, and have convenience to carry, or are in the habit of taking, tendered to them for conveyance on their usual route, and for which the hire is offered, treating all persons alike (*cæteris paribus*) upon the same terms and at like rates (*Crouch v. Lond. & North Western*).

SEC. II.

Railway
company
bound to re-
ceive such
goods as
they usually
carry from
all persons
alike.

CAP. II.
SEC. II.

Only bound
to carry ac-
cording to
their public
profession.

R. C., 2 C. L. Rep. 188). And they are liable for refusing to take goods such as they are accustomed to carry without special reason for refusing. But a company is not bound to carry goods which they do not profess to the public to carry, or to a station, whether intermediate or terminal, to which they have not been in the habit of carrying the class of goods offered. In *Johnson v. Midland R. C.* (18 L. J. Ex. 366), Lord Wensleydale said, "A carrier may profess to carry light goods only, and then he cannot be compelled to carry heavy goods; or he may say that he will carry from Manchester to London, and not from the intermediate stations, and then he cannot be made to carry goods from those places; but as soon as he has publicly professed to carry in any particular manner, and so long as he does so, he is bound to carry the goods of any one, if he has room in his conveyance, and the price of the carriage be tendered when the goods are offered." Thus, although a company carry coals and other goods for hire from one end of their line to the other, and carry goods other than coal from an intermediate station, they are not bound to carry coal from that station unless they have publicly professed to do so, and even if

they have held themselves out as carriers of coals from that station, no action for refusing to carry coals from it will lie, unless it be shown that the company had conveniences at the station for receiving and carrying the coal (*Johnson v. Midland R. C.*, *supra*). If the company have carried coals, but only under special contracts, they do not thereby incur the common law obligation to receive all such as are tendered. (*Oxlade v. North Eastern R. C.*, 26 L. J. C. P. 129). And if the company have been in the habit of carrying a particular class of goods by a certain train only, although such train should be run but once a day or once a week, they cannot be compelled to take such goods by any other train; but where a railway company received cattle for carriage, and it did not appear that there were any ordinary cattle trains on the line, it was held to be properly left to the jury to say what was a reasonable time within which to carry them, and therefore whether the company were bound to send the cattle by special train. (*Donahoe v. Lond. & North Western R. C.*, 15 W. R. 792).

A company may refuse to receive because they have no convenience, for they are not obliged to supply a greater number of waggons

CAP. II.
SEC. II.

Grounds for
refusing to
receive
goods.

CAP. II.
SEC. II.

for any particular kind of traffic than they have been in the habit of using (*Johnson v. Midland R. C.*, *supra*), or because they cannot carry the particular goods with security (*Batson v. Donovan*, 4 B. & Ald., 28), or because they are brought at an unreasonable time (*Lane v. Cotton*, 1 Ld. Raym., 652; *Pickford v. Grand Junction R. C.*, 12 M. & W. 766), or because the goods are not packed when they ought to be, or that they are insufficiently packed, having regard to their character and the nature of the journey (*Munster v. South Eastern R. C.*, 27 L. J., C. P. 308; *Hart v. Baxendale*, 16 L. T., (N.S.) 396), or because the customer refuses to pay a reasonable price for their carriage (*Wyld v. Pickford*, 8 M. & W. 443).

Dangerous
articles.

Railway companies may refuse dangerous articles, as aqua fortis, gun-powder, oil of vitriol, and lucifer matches; and any persons sending such without distinctly marking their nature on the outside of the package, or otherwise giving notice in writing to the book-keeper or other servant of the company with whom the same is left at the time of sending, shall forfeit to the company £20 for every such offence (8 & 9 Vic., c. 20, s. 105); a guilty knowledge however on the part of the sender is necessary to render him liable to the

penalty, and therefore, where a carrier, who delivered dangerous goods to a railway company was imposed on by his customer it was held that the carrier could not be convicted (*Heane v. Gorton*, 2 Ell. & Ell. 66).

CAP. II.
SEC. II.
—

The company may require parcels suspected to contain goods of a dangerous nature to be opened to ascertain the fact.

May open
suspected
parcels.

By 29 & 30 Vic., c. 69, s.s. 1 & 6, nitro-glycerine is declared specially dangerous, and carriers are exempted from liability to receive it, and a person sending it without notice to the company is liable to a penalty of £500, or imprisonment for 2 years with or without hard labour (sec. 3). By a subsequent Act (32 & 33 Vic., c. 113) possession or carriage of nitro-glycerine without a special licence is a misdemeanour punishable with a fine of £500, unless the company after using due precautions carried the nitro-glycerine without knowledge of its nature.

Nitro-Gly-
cerine.

If the customer in sending dangerous articles does not take reasonable care that the dangerous nature should be distinctly communicated to the company or its servants he will be liable for damages caused by it; as where a person sent a carboy of *nitric acid*, merely informing the carrier that it was *acid* (*Farrant v. Barnes*, 31 L. J., C. P. 137)

Dangerous
nature to be
distinctly
stated.

CAP. II.
SEC. II.

No general
right to open
all parcels.

The right of the company to have parcels opened only extends to those suspected to contain dangerous articles ; they have no general right in all cases under all circumstances to require to be informed of the contents of packages tendered to be carried (*Crouch v. Lond. and North Western R. C.*, 23 L. J., C. P. 73).

"Packed
parcels."

A railway company is bound to receive "packed parcels" from other carriers, and charge for them at the same rate as similar goods of other persons (*Crouch v. Great Northern R. C.*, 9 Ex. 556).

In addition to the common law liability imposed upon railway companies to receive goods from all persons alike without making any personal distinctions, it is provided by sec. 2 of the Railway and Canal Traffic Act as follows :—

Sec. 2, Rail-
way and
Canal Traffic
Act.

"Every railway company, canal company, and railway and canal company, shall, according to their respective powers, *afford all reasonable facilities* for the receiving, forwarding, and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles ; *and no company shall make or give any undue or unreasonable prefer-*

ence or advantage to or in favour of any particular person or company, or any particular description of traffic in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus, station, or wharf of the one near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf."

CAP. II.
SEC. II.

Section 3 enables parties complaining of any undue preference or other act in contravention of sec. 2, on the part of a company, to apply and obtain from the Court of Common Pleas an injunction restraining the company from continuing so to act.*

Undue preference.

It has been held an undue preference where a railway company permitted a carrier (who acted as superintendent of their goods traffic) to hold himself out as their agent for the receipt of goods to be carried on their line, and his office as the receiving office of the company, and goods were received by him at that place without requiring the senders to sign conditions which the company required all other carriers who brought goods to their station to sign (*Baxendale v. Bristol & Exeter R. C.*, 11 C. B. (N.S.) 787). So it was held in *Gorton v. Bristol & Exeter R. C.*, 30 L. J., Q. B. 273, an undue preference for a company to close their offices at a certain hour and refuse to receive goods which were tendered to them after, with the proper amount of carriage, while at the same time they continued

* As the chief questions, so far as regards the carriage of goods, on "reasonable facilities" and "undue preference" have arisen in regard to preferential tariffs, see sec. 5 on Tolls, *infra*, p. 41.

to receive goods prepared in the same manner from a particular individual. But in *Palmer v. Lond. & South Western R. C.*, 35 L. J., C. P., 289, where the circumstances were the same, the judges being divided in opinion, no injunction was granted.

CAP. II.
SEC. II.
—

Preference to a customer who engaged to employ other lines of the company distinct from and unconnected with that in respect of which such preference was granted was held undue (*Baxendale v. Great Western R. C.*, 28 L. J., C. P., 69).

In *Cooper v. Lond. & South Western R. C.*, 27 L. J., C. P., 324, the company had been in the habit of unloading all goods and placing them in or near the owners' waggons; and under a new system they declined to unload for C (whose goods were sent in large quantities and in separate trucks) without extra pay. They continued to unload for P who sent small quantities, which, being put into trucks with the company's own traffic, *it was convenient to the company* to continue to unload. The Court refused to order the company to unload the complainant's goods also, his application to the Court being for this, and not for an injunction to desist from unloading P's goods, and it was not proved that he had

CAP. II.
SEC. II.
—

requested the company to remove the cause of complaint. The judges intimated an opinion that had the application been so framed and a proper request made to the company to *desist from unloading* P.'s goods they would probably have given relief, especially if the unloading of P.'s goods could be shown to be prejudicial to C.

In the late case of *West v. London and North Western R. C.* (39 L. J., C. P. 283), two coal dealers, A. and B., were in the habit of sending coal by the R. and S. Railway to L. At other stations on that line the practice of the company seems to have been to apportion a quantity of land near the station amongst those merchants who required it, as wharves or depots for the reception of coal. From the nature of inland coal traffic this wharf or depot accommodation was almost necessary to its being carried on profitably. At L. however, the company allowed A. to hold, subject to a month's notice, as a coal wharf, the whole of the land adjoining the station which they considered they could appropriate to such a purpose. A. had in fact only used part of it, and used it for the purpose of stacking his coal till sold; B. found that unless put on the same footing as A., he

could not carry on a coal trade at L., and he therefore applied to the court to compel the company either to take away A.'s privilege, or to put him in a similar position. The court being equally divided in opinion the rule dropped. But the ground on which the dissentient judges thought the application ought to be refuted was "that it had nothing whatever to do with the conveyance and transport of the coal, or with any facilities or accommodation relating to conveyance and transport," and was therefore not within the statute.

CAP. II.
SEC. II.

BYE LAWS.—By 8 & 9 Vic., c. 20, s. 108, railway companies are empowered to make bye laws (*inter alia*) "for regulating the receipt and delivery of goods and other things which are to be conveyed upon carriages used on the line." And under 26 & 27 Vic., c. 93, s. 32, they may make bye laws relating to passengers, animals, and goods conveyed in steam vessels belonging to the company. But such bye laws must not be repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of the company's special acts of parliament, or to the common law liabilities or

SEC. III.

CAP. II. duties of such company as carriers. They
SEC. III. must be reduced into writing, and have af-
fixed thereto the common seal of the com-
pany, and after being sanctioned by the
Board of Trade are to be painted on boards,
or printed on paper and pasted on boards and
hung up, and affixed in a conspicuous part of
every wharf or station belonging to the Com-
pany, according to the nature or subject matter
thereof, so as to give public notice thereof to
the parties interested therein or affected
thereby.

SEC. IV. SPECIAL CONTRACTS.—An ordinary con-
tract for carriage is entered into when the
customer simply delivers and the company
receive goods consigned to an indicated desti-
nation, without any stipulation being made as
to what risk the company is to be liable for,
and in that case the common law liability of
carriers attaches to the company. But when
the company attach any conditions to the re-
ceipt of goods limiting their liability, a spe-
cial contract is created. The law regulating
special contracts is contained in several very
loosely worded clauses of sec. 7 of the Rail-
way and Canal Traffic Act, which have been
provocative of a succession of extremely con-

Ordinary
contract.

Special
contract.

trary expositions from various judges. They are as follows:—"Every such company as aforesaid shall be liable for the loss of, or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability; every such notice, condition, or declaration being hereby declared to be null and void; provided always that nothing herein contained shall be construed to prevent the said companies from making *such conditions* with respect to the receiving, forwarding, and delivering of any of the said animals, articles, goods, or things as shall be adjudged by the court or judge before whom any question relating thereto shall be tried to be just and reasonable. * * * Provided also that no *special contract* between such company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as aforesaid, shall be binding upon or affect any such party, unless the same be signed by him or by the

CAP. II.
SEC. IV.

Sec. 7, Rail-
way and
Canal Traffic
Act.

CAP. II.
SEC. IV.

A special contract must be signed by the customer, and must be just and reasonable.

person delivering such animals, articles, goods, or things respectively for carriage."

Without following the current of conflicting decisions, it will be sufficient to state the effect of the judgment of the House of Lords in *Peck v. North Staffordshire R. C.*, 32 L. J., Q. B., 241, which now is and must remain law until the contrary is established by statute.

A general notice to limit the liability of a company is void; but the company may make special contracts with the customer for that purpose, provided such contracts are (1) signed by the customer or person delivering the goods, and (2) are just and reasonable in their conditions.

One bad condition vitiates the set.

And if any one of a set of conditions is bad, as not being just and reasonable, it vitiates the whole (*Kirby v. Great Western R. C.*, 18 L. T., (N.S.) 658, though the contrary was held in *Simons v. Gt. Western R. C.*, 26 L. J., C. P., 25, and in *McCance v. Lond. & North Western R. C.*, 31 L. J., Ex. 65.

Signature.

The contract must be signed by the customer or his agent, or the person delivering the goods. If a man has an opportunity of reading the conditions, and chooses to sign them without reading them, he is nevertheless bound by them if they are reasonable (*Lewis*

v. *Gt. Western R. C.*, 29 L. J., Ex. 425), and if an agent sign he must be taken to have known the contents so as to bind the principal (*Kirby v. Gt. Western R. C.*, 18 L. T. (N.S.) 658. But in a case where it was dark in the office when the goods were brought, and the clerk required the person bringing them to sign a receipt note, not informing him of its contents, and there was not light enough to read, but telling him on his expressing reluctance that it was a mere formality and of no consequence, and it contained conditions which it was necessary should be signed to be binding, the Court held that a signature obtained under such circumstances was of no avail, and that there was no contract by reason of the fraud (*Simons v. Great Western R. C.*, 2 C. B., 626).

It has been decided that the 7th sec. only applies to traffic on the contracting company's own line, and therefore a contract exempting a company from liability for loss on a railway not belonging to or worked by them need not be in writing or signed by the customer, and the company will be protected by the condition, having been personally communicated to the customer (*Zunz v. South Eastern R. C.*, L. R. 4, Q. B. 539, s. c. nom *Turner v. Same*, 17 W. R. 1069).

CAP. II.
SEC. IV.
—

The act only
applies to
traffic on the
company's
line.

CAP. II.

SEC. IV.

Reasonable-
ness depends
upon cir-
cumstances.

It would be extremely difficult to say what conditions are in themselves fair and reasonable, for a reasonable condition may be applied to a state of facts which make it unreasonable (*Gregory v. West Midland R. C.*, 33 L. J., Ex. 157). Its reasonableness or unreasonableness will materially depend upon the nature of the articles to be conveyed, the degree of risk attendant upon their conveyance, the rate of charge made, and whether the railway company were bound by the common law or by statute to carry the articles on being paid the customary hire, or whether it was in their power to reject them altogether, and refuse to carry them on any terms (*Pardington v. South Wales R. C.*, 26 L. J., Ex. 105, and cases *infra*). Instances of such conditions as have been held reasonable, and others that have been held unreasonable, will indicate the leaning of the Courts. But they will only be proximate guides to the public, since the particular circumstances of each case must play so important a part in deciding whether a condition is reasonable or not.

Reasonable
conditions.

The following conditions have been held to be reasonable :—

Goods car-
ried at spe-
cial rates.

“Goods conveyed at a special or mileage rate must be loaded and unloaded by the

owners or their agents, and the company will not be responsible for any risk of stowage, loss or damage, however caused, nor for discrepancy in the delivery as to either quantity, number or weight, nor for the condition of articles so carried, nor for detention or delay in the conveying or delivery of them however caused" (*Simons v. Gt. Western R. C.*, 26 L. J., C. P. 25).

CAP. II.
SEC. IV.

"That the company will not, under any circumstances, be liable for loss of market, or other claim arising from delay or detention of any train, whether at starting or at any of the stations, or in the course of the journey;" the claim being for loss of market (*White v. Gt. Western R. C.*, 26 L. J., 158; see also *Lord v. Midland R. C.*, 2 L. R., C. P. 339).

Loss of market

"The company is to be held free from all risk or responsibility in respect of any loss or damage arising in the loading or unloading, from suffocation, or from being trampled on, bruised, or otherwise injured in transit, from fire, or from any cause whatever. The company is not to be held responsible for carriage or delivery within any certain or definite time, nor in time for any particular market;" the claim being for suffocated and injured cattle sent by rail (*Pardington v. South Wales R. C.*, 26 L. J., Ex. 105).

Injury to live stock.

CAP. II. "No claim for deficiency, damage, or deten-
SEC. IV. tion shall be allowed unless made within

Claim to be made within limited time three days after delivery of the goods, nor for loss, unless made within seven days after the time when they should have been delivered."

Incorrect description. "The company will not be answerable for the loss or detention of any goods untruly or incorrectly described or declared in the declaration or receiving note furnished by the company (*Lewis v. Great Western R. C.*, 29 L. J., Ex. 425).

Detention of fish. "The company will not undertake to convey fish except under the general conditions published at the Railway Stations, in the train tables, and except under the following special conditions (which were signed by the plaintiff):—that the company shall not be responsible under any circumstances for loss of market, or other loss or injury arising from delay or detention of trains, exposure to weather, stowage, or from any cause whatever other than gross neglect or fraud;" in answer to a claim where the fish arrived too late for market (*Beal v. South Devon R. C.*, 29 L. J. Ex. 441).

Liability for damage to horses and dogs. "The company will not be liable in any case for loss or damage to any horse or other

animal above the value of £40, or any dog above the value of £5, unless a declaration of its value, signed by the owner or his agent at the time of booking, shall have been given to them; and by such declaration the owner shall be bound, the company not being in any event liable to any greater amount than the value so declared. The company will in no case be liable for any injury to any horse or other animal, or dog, of whatever value, when such injury arises wholly or partially from fear or restiveness. If the declared value of any horse or other animal exceed £40, or any dog £5, the price of conveyance will, in addition to the regular fare, be after the rate of £2 10s. per cent., or 6d. per pound upon the declared value above £40, whatever may be the amount of such value, and for whatever distance the horse or other animal is to be carried" (*Harrison v. Lond. Brighton & South Coast R. C.*, 31 L. J., Q. B. 113).

"The company will not be answerable for the loss or detention in respect of goods destined for places beyond the limits of the company's railway; and as respects the company, their responsibility will cease when such goods shall have been delivered over to another carrier in the usual course for

CAP. II.
SEC. IV.

Goods to be
carried be-
yond the
company's
line.

CAP. II. further conveyance. Any money which
 SEC. IV. may be received by the company as
 — payment for the conveyance of goods be-
 beyond their own limits will be so received
 only for the convenience of the consignors,
 and for the purpose of being paid to the other
 carrier (*Aldridge v. Gt. Western R. C.*, 33
 L. J., C. P. 161).

Low rates of
 carriage.

In *Robinson v. Gt. Western R. C.*, 35 L. J.
 C. P. 123, the plaintiff knew there was a cer-
 tain rate for carrying horses on a railway by
 passenger train and in horse-boxes, and that
 there was a lower rate for carrying them by
 goods train and in waggons. It was held a
 reasonable condition of the latter mode of
 conveyance that the horses should be carried
 at the owner's risk, and that such a condition
 would protect the company if the horses were
 injured on the journey ; but would not pro-
 tect them for non-delivery where the con-
 tract was to deliver within a reasonable time ;
 the ground on which this condition was held
 reasonable being that the charge was pro-
 portioned to the risk, and the customer had
 the alternative of paying a higher charge with
 more responsibility on the part of the com-
 pany.

Sea transit.

Where a company receive goods and ani-

imals to be carried partly by sea and partly by land, a condition exempting them from any loss or damage which may arise during the sea transit, from the act of God, the king's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever, will be valid if published in a conspicuous manner in their booking office, and printed in a legible manner on the receipt or freight note which the company gives for such goods or animals (31 & 32 Vic., c. 119, s. 14).

CAP. II.
SEC. IV.

The following are instances of conditions that have been held unreasonable :—

Unreasonable conditions.

“The bearer undertakes all risk of loading, unloading, and carriage, whether arising from the negligence or default of the company or their servants, or from defect or imperfection in the station, platform, or other places of loading or unloading, or of the carriage in which they may be loaded or conveyed, or from any other cause whatsoever” (*Rooth v. North Eastern R. C.*, 36 L. J., Ex. 83).

Company not to be liable for their own defaults or defects of means of transit.

“The company shall not be responsible for the loss of or injury to any marbles, musical instruments, toys or other articles, which

Extraordinarily hazardous goods to be insured.

CAP. II. from their brittleness, fragility, delicacy, or
SEC. IV. liability to ignition are more than ordinarily
hazardous, unless declared and insured according to their value" (*Peek v. N. Staffordshire R. C.*, 32 L. J., Q. B. 241).

Not liable for loss, etc., of goods imperfectly packed "The company will not be accountable for the loss, detention or damage of any package insufficiently or improperly packed, marked, directed or described, or containing a variety of articles liable by breakage to damage each other" (*Simons v. Gt. Western R. C.*, 26 L. J. C. P. 25). Here the claim was for *loss* of the goods.

Conveyance to be entirely at the owner's risk. "This ticket is issued subject to the owner undertaking all risk of conveyance, loading, and unloading whatsoever, as the company will not be responsible for any injury or damage (howsoever caused), occurring to live stock of any description travelling upon the Lancashire and Yorkshire Railway, or in their vehicles" (*McManus v. Lancashire & Yorkshire R. C.*, 28 L. J., Ex. 353).

Company not liable for empties. "The company will not be answerable for the loss or detention of, or damage to wrappers or packages of any description charged by the company as 'empties'" (*Aldridge v. Gt. Western R. C.*, 33 L. J., C. P. 161).

Over carriage. "The company are not to be answerable

for any consequences arising from overcarriage, detention, or delay in, or in relation to the conveying or delivery of the said animals, however caused" (*Allday v. Gt. Western R. C.*, 34 L. J., Q. B. 5).

CAP. II.
SEC. IV.
—

"That 50 per cent. extra on the ordinary rates shall be paid upon all 'packed parcels,'—that is packages of common carriers', containing several parcels of different persons packed together" (*Garton v. Bristol & Exeter R. C.*, 30 L. J., Q. B. 273).

Packed parcels.

The cases decided seem to have established the following leading principles:—

1. Any stipulation or condition, framed without limitation or exception, to exempt a company from liability for its own negligence or misconduct, or that of its servants and agents, is unjust and unreasonable.

Principles established by the cases.

2. A condition is reasonable which reduces a company's liability to a minimum if it is coupled with compensating advantages to the customer (such as cheapness of carriage), and the latter has the alternative of getting rid of the condition by paying a reasonably higher rate.

3. A condition is reasonable which exempts a company from any liability for extraordinary loss to the customer (such as that of

CAP. II. market or profit, or deterioration from innate
 SEC. IV. infirmity), caused by those ordinary detentions to which goods traffic is subject; especially if the goods are such as the company only profess to carry on special terms, and are peculiarly liable to deterioration.

SEC. V. TOLLS.—A railway company have a right to
 their reasonable hire, and may in the first instance refuse to take charge of goods unless previously paid the price of their carriage; or having conveyed them to their place of destination may decline delivering them until payment. But it is not necessary to support an action for refusing to carry, that the satisfaction should have been tendered in the strict sense of that term as applied to antecedent debts. It is sufficient if the consignor was ready and willing to deal for ready money, and notified that willingness to the carrier; the money is not required to be paid down until the carrier receives the goods which he is bound to carry (*Pickford v. Grand Junction R. C.*, 8 M. & W. 372).

Company not bound to carry unless the carriage is paid.

If the price of carriage is not paid when the goods are received the company cannot sue for such price till they are delivered (*Barnes v. Marshall*, 18 Q. B. 785).

The tolls demandable are defined and regulated by the special act of each company according to a mileage rate, and a company may charge according to the mileage where the transit is not by the shortest route if such route is reasonable, usual, and accustomed (*Lond. & South Western R. C. v. Myers* 39 L. J., C. P. 57). Sec. 92 of the Railway Clauses Consolidation Act, 8 & 9 Vic. c. 20, provides that "it shall not be lawful for the company at any time to demand or take a greater amount of toll or make any greater charge for the carriage of passengers and goods than they are by this (8 & 9 Vic. c. 20) and the special act authorised to demand."

CAP. II.
SEC. V.

Tolls are defined by the company's special act.

For the purpose of ascertaining the tolls demandable in any instance the special act of the company must be referred to. The rates vary very greatly; some companies on account of peculiarity of position, gradients, &c., being empowered to make much higher charges than others. They were settled according to no fixed principle, but according to the individual circumstances of each company. The tolls on goods are regulated according to a classification in which regard is had to the nature of the commodities, and a larger charge permitted for goods of

CAP. II.
SEC. V.

a higher value than for such as are heavy and require a less degree of care and entail a smaller amount of responsibility.

The company are bound to adhere to the classification they promulgate, and they cannot in favor of any particular class of customers charge goods as falling within one class which they charge to another as falling within a different class, and any excess of charge from such a cause they will be bound to refund to the customer (*Parker v. Gt. Western R. C.*, 3 R. C. 562).

Tolls must
be reason-
able

Railway companies are subject to the common law liability of charging reasonably, so that if their special act gives them a discretion as to the amount of rates applicable to a particular class or description of goods it must be exercised in a reasonable manner, and the rates imposed will not be binding if unreasonable, or if not charged equally to all persons (*Sutton v. Gt. Western R. C.*, 35 L. J. Ex. 18).

The following provisions are made by 8 & 9 Vic. c. 20 :—

A list of tolls must be exhibited in a conspicuous place at all stations where tolls are payable (Sec. 93) and milestones and posts at the distance of one quarter of a mile from

each other must be set up and maintained by the company (Sec. 94).

CAP. II.
SEC. V.

Sec. 90, after reciting that it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the purposes of the traffic, but that such power should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively or unfairly creating a monopoly either in the hands of the company or of particular parties; enacts that "it shall be lawful for the company, subject to the provisions and limitation herein, and in the special act contained, from time to time to alter or vary the tolls by the special act authorized to be taken, either upon the whole or any portion of the railway as they shall think fit: provided that all such tolls shall be charged equally to all persons, and after the same rate, whether per ton, per mile, or otherwise, in respect of all passengers and of all goods and carriages of the same description, and conveyed or propelled by a like carriage or engine passing only over the same portion of the same line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made, either directly or in-

Power to
vary tolls.

CAP. II.
SEC. V.

directly, in favour of or against any particular company or person travelling upon or using the railway."

This section, and sec. 2 of the Railway and Canal Traffic Act (see *ante*, p. 24), providing against "*any undue and unreasonable preference*, or advantage to or in favour of any particular person or company, or any particular description of traffic ;" and subjecting "any particular person or company, or any particular description of traffic to *any undue or unreasonable prejudice*, or disadvantage in any respect whatsoever," have been fruitful subjects of litigation in respect to preferential tariffs.

Preference
to an individual
simpliciter is
undue.

The most obvious case of preference is where the company agree with a particular individual to carry his goods at a lower rate than that charged to other persons, where there is nothing in the nature of the traffic itself to justify such a difference. Thus, in *Ransome v. Eastern Counties R. C.* (26 L. J., C. P. 91), where a company made an agreement with A. to carry for him coals during three years, from Peterborough to various places on their lines of railway at certain rates ; B., a coal merchant at Ipswich, sent coals (which had been brought to that port

by sea) to various places on the same lines of railway, and the company charged him a much larger sum per ton in proportion to the distance over which the coals were carried than they charged to A.; *the professed object* of the difference being to enable A., whose coals came to Peterborough by railway, to compete in the coal trade of the district with B., who had the advantage of having his coals brought to Ipswich by sea. It was held an undue preference; though it was laid down that in determining whether a company has given "any undue and unreasonable preference," *the courts may take into consideration the fair interests of the railway itself*, and entertain such questions as whether the company might not carry larger quantities, or for longer distances per ton per mile, than smaller quantities or for shorter distances, so as to derive equal profit to itself.

CAP. II.
SEC. V.
—

Mere inequality of charge does not conclusively show that there is an undue preference. The question whether an arrangement allows an undue advantage to particular parties mainly depends upon the adequacy of the consideration given to the railway company in return for the advantages offered to the person with whom the contract is made.

Inequality
of charge not
necessarily
undue pre-
ference.

CAP. II.
SEC. V.

And it is reasonable for a railway company to have two modes of carriage—one by which they charge at a high rate and take a great amount of responsibility, and another by which they take at a cheaper rate, but at a greater risk to the bailor (*Robinson v. Gt. Western R. C.*, 35 L. J., C. P. 123.)

A company may regulate charges according to the relative expense to themselves.

The company may impose a scale of charges on goods of a particular character different from that on goods of another character, or on goods over one part of their line different from what is charged over another part of the same line, without a desire to favour any particular kind of traffic or any particular individual, but influenced only by a consideration of the expense of carriage. And a company will be justified in carrying goods for one person at a less rate than that at which they carry the same description of goods for another person, if there are circumstances which render the cost to the company of carrying for the former less than the cost of carrying for the latter.

The mere wish to introduce a particular coal into a district is no ground for preferential dues.

In a case in which a Northern railway company, *from a desire to introduce northern coal and coke* into Staffordshire, were induced to make special agreements with certain merchants for the carriage of coal and coke

at a lower rate than their ordinary charge, it was held that this was not a legitimate ground for making such agreements, and that lowering their rate for that purpose, *there being nothing to show that the pecuniary interests of the company were affected*, was giving an undue preference (*Oxlade v. North Eastern R. C.*, 26 L. J., C. P. 129).

CAP. II.
SEC. V.

In a more recent case it was held competent for a company to enter into special contracts, whereby advantages may be secured to individuals in the carriage of goods upon the railway where it is made clearly to appear that in entering into such agreements the company has only the interests of the proprietors, and the legitimate increase of the profits of the railway in view, and the consideration given to the company in return for the advantage afforded by them is adequate, and the company is willing to afford the same facilities to all others upon the same terms. So that it is no undue or unreasonable preference, in contravention of the statute, for a company to carry at a lower rate in consideration of a *guarantee* of large quantities and full train loads at regular periods, provided the real object of the company is greater remunerative profit by the diminished

Scale of charges may be graduated according to quantities, full and regular train loads, as well as distance merely.

CAP. II.
SEC. V.

cost of carriage, although the effect is to exclude from the lower rate persons who cannot give the guarantee (*Nicholson v. Gt. Western R. C.*, 28 L. J., C. P. 89).

The scale
must be re-
latively fair.

It may happen that a scale of charges and other terms and conditions are so arranged for short distances, small quantities, &c., as to be excessive, unfair, and unreasonable as compared with the terms granted for large quantities, long distances, etc., and had this point been raised in this case, the court intimated that it would have felt bound to submit these matters to a detailed investigation by an engineer or traffic manager of a railway, who would be able by calculations to arrive at a satisfactory result upon the principles recognized by railway companies of obtaining the greatest quantity of work from an engine, plant, and staff, at the least expense. In other words, the court, whilst recognizing the principle that the cost of carriage to the company being less in some cases than others, and other circumstances, may be grounds for graduated and varying charges, has indicated that it is prepared to ascertain that even the varying scales and terms are *relatively* fair and reasonable, so that even those who cannot guarantee the most favour-

able terms may not be charged more than proportionably higher rates. CAP. II.
SEC. V.

If the goods are the same in quantity and quality, in the cost of receiving and carriage, and in the profit which is thereby made, it is unreasonable to charge more or less for the same service according as the customer of the railway thinks proper, or not to bind himself to employ men in totally distinct transactions. Per Willes, J., in *Baxendale v. Gt. Western R. C.*, 28 L. J., C. P. 69 (Bristol case), where a preference was given to a customer who engaged to employ other lines of railway distinct from, and unconnected with that in respect of which such preference was granted.

An obiter opinion was expressed by the judges in *Garton v. Bristol & Exeter R. C.*, 28 L. J., C. P. 306, that a preference with respect to a reduced rate of carriage of certain goods, given by a railway company to certain individuals in consideration of their contracting to have all such goods consigned to them through the railway and not by water or other means, is an undue preference, *unless* it be clearly shown that it is done in order to prevent a competition with the railway, or that there is secured thereby to the company

Preference charges not warranted merely because the person engages to employ the other lines of the company.

A preference reasonable that enables the company to compete with another carrier.

CAP. II.
SEC. V.

such an amount of traffic as to compensate for making the reduced rate. This would be open to the inference that preferential tariffs under the latter circumstances are reasonable; and in *Harris v. Cockermouth, &c. R. C.* (27 L. J., C. P. 162) Cockburn, C.J., remarked that it would be reasonable "if the company make a distinction between terminal and intermediate traffic, where there may be fair and sufficient reasons, as, for instance, in respect of terminal traffic, there may be competition with another railway."

Undue preference to the company themselves in a separate trade.

A company may not give an undue preference even to themselves in respect of a trade independent of the railway. In *Baxendale v. Gt. Western R. C.*, 28 L. J., C. P. 81 (Reading case) a railway company formerly charged a uniform rate of 3s 6d per ton on all goods conveyed on their line between R. and P. The goods were collected and delivered both by the company and by B. at a charge of 4s 10d per ton. The company who had power under their acts to impose their own rates of charge for carrying, but no power to impose tolls for collecting and delivering, raised the charge for carrying to 8s 4d, being the aggregate of the above charges,

CAP. II.
SEC. V.

with an intimation to the public that they would collect and deliver goods free of all charge. The real purpose of this arrangement was to compel persons desiring to have their goods conveyed by the railway to employ the company to collect and deliver such goods, and thus to secure this business and the profits upon it, as well as to exclude B. from competing with them in this department of business. It was held that this arrangement was an undue preference to the company in their separate capacity of carriers other than on the line of railway, and also an undue prejudice to B. In delivering judgment in this case Cockburn, C. J., defined with admirable clearness the sense in which the dictum in previous cases is to be understood "that the court may take into consideration the fair interests of the railway itself." "It may be convenient," said his lordship, "in the first place, to advert to a distinction not always kept sight of in argument, between cases in which the interest of the company sought to be promoted by the regulation or act complained of, is one which arises with reference to the railway itself as to which the question occurs, and those in which the benefit sought to be obtained by the company is one which

CAP. II.
SEC. V.

has reference to interests distinct from those of the particular railway, as where, for example, the company are the proprietors of another railway or carry on some other business. In the latter class of cases it appears to us clear that the company must be taken to be, quoad the particular railway, in the position of third parties, and that they cannot, with a view to such separate interests, give an undue preference or impose an unreasonable disadvantage, any more than they could do so to promote the interests of any other party. Thus if a railway company being promoters of one line from A. to B., and of another line from C. to D., were, in order to obtain the custom of a particular individual on the first of those lines, on which they might be subject to a competition from a rival line, to agree to convey his goods on the line from C. to D. at a cheaper rate than those of another person using only the latter line; or if a railway company carrying on in addition to its business as carriers on the line, that of carriers to and from the termini of the railway, were, with a view to obtain additional custom in the latter, to carry on the railway for those who employed them as carriers to and from the railway at a lower

rate than those who did not ; in both these cases we should have no difficulty in holding that the company must be considered, as regards those separate interests, in the light of third parties, and that they cannot promote those interests at the expense of the right of the public to that equality on the particular railway which it was the intention of the Act of Parliament to secure. Greater difficulty and nicety arises in dealing with cases in which the purpose and effect of the thing complained of is the benefit of the company in their character of proprietors of a particular railway. In these cases, the court might feel greater reluctance to interpose, partly from an unwillingness to interfere with the parties in the management of their own affairs for their own advantage, partly from a disposition to give companies credit for acting on an enlightened view of their own interests as identified with those of the public ; yet if the court became clearly satisfied that the company were seeking to promote its own advantage by establishing an inequality which was unreasonable under the circumstances, and operated unfairly and injuriously on particular individuals, or that it was affording to one person or set of per-

CAP. II.
SEC. V.

sons an advantage which it would not afford to another under similar circumstances, this court would not hesitate to interfere to prevent such a result, although by so doing they might prevent the company from securing all the profit that it might otherwise derive from the use of its property." And it is immaterial that no profit is made by the collecting and delivering (*Garton v. Gt. Western R. C.*, 28 L. J., C. P. 158.)

Preference to
goods sent
through
company's
agent.

Where a company, possessed of a line from B. to C., advertized to convey goods from A. to C. in conjunction with another company, at the rate of 50s. per ton, *provided they were consigned by and to their own agent* at those respective places, but if consigned through any one else they charged 2s. 6d. per ton more, it was held an undue preference (*Baxendale v. North Devon R. C.*, 3 C. B. (N. S.) 324).

Preference
to buy off an
opposing
scheme.

Carrying coals from a colliery along a railway at a lower rate of charges than coals from other coal pits in the same locality, in consequence of a threat from the owner of the colliery to construct another railway by which the traffic would have been diverted if the railway company had not consented to carry at such lower rate, was held

an undue preference by the company (*Harris v. Cockermouth R. C.*, 27 L. J., C. P. 162). CAP. II.
SEC. V.

So it was held an undue preference where a company made a scale of charges for the carriage of coals from P. and I. respectively to various places, the effect of which was to diminish the natural advantages which the I. dealers possessed over those of P.—from their greater proximity to those places—by annihilating (in point of expense of carriage) in favour of the latter, a portion of the distance between P. and those places (*Ransome v. Eastern Counties R. C.*, 27 L. J., C. P. 166). In the same case, however, the court declined to interfere where the company had created districts in which they carried coals at a lower ratio for quantities not less than full train loads of 200 tons, and so adjusted those districts that the places where the I. dealers traded was distributed into three districts; in each of which the traffic was, in consequence of such division, insufficient to enable them to send the required quantity, and avail themselves of the lower rates. The I. dealers alleged that in order to take advantage of the reduced rate, they would necessarily (in consequence of the parts to which they traded having been put into three districts) have to

Undue preference to deprive one customer of the natural advantages of his situation.

CAP. II.
SEC. V.

send three separate full train loads from I, whereas the districts were so arranged that dealers from P. had the places in which they dealt all in one district. The traffic manager swore that these districts were arranged solely with a regard to consumption, and not with any view of preference, and the complainants did not fully and clearly show that the districts could otherwise have been arranged, nor clearly established a case of undue preference. So it was held, that that part of the case was not sustained.

“Packed
 parcels”
 must be car-
 ried at the
 same rate as
 similar goods

There are some carriers whose business it is to collect parcels from different tradesmen, and put them into one package to send by railway. Such parcels (“packed parcels” they are called) must be charged at the same rate as similar goods are charged to other persons under similar circumstances. Thus, where a company charged a tonnage rate upon all goods over 1 cwt., and a higher rate for all goods under that weight, and when several parcels each under 1 cwt. were delivered to the company by one person, in a single consignment, at one and the same time, and addressed to the same consignee, the company charged a tonnage rate; but common carriers sending large consignments of goods directed

to themselves as consignees (each consignment containing several packages, many of them having the names and addresses of the persons to whom the carriers intended to deliver them), were charged for each package in the consignment according to its weight, it was held an inequality of charge, and the carriers were entitled to recover the overcharge (*Baxendale v. London and South Western R. C.*, 35 L. J., Ex. 108).

Nor may the company charge an increased rate, though entitled under their tariff of carriage rates to charge higher for "packed parcels," if that rate is not charged to other tradesmen sending exactly the same description of goods (*Sutton v. Gt. Western R. C.*, 35 L. J., Ex. 18; *Gt. Western R. C. v. Sutton* 38 L. J., Ex. 177). But the court will not grant an injunction before trial to restrain an overcharge by a railway company for packed parcels (*Sutton v. South Eastern R. C.*, 35 L. J., Ex. 38). The carrier paying the excess may recover it back by action (*Baxendale v. Gt. Western R. C.*, 33 L. J., C. P. 197).

The company have no right to open parcels to see if they are packed. But where a number of loose parcels were sent with no common direction upon them, it was held

CAP. II.
SEC. V.
—

When the
court will
interfere.

that the company were entitled to charge for each parcel separately (*Baxendale v. Eastern Counties R. C.*, 26 L. J., C. P. 137).

It is said that to induce the court to interfere to prevent undue preference a case must be made out of public inconvenience, and not merely an individual grievance (*Barrett v. Gt. Northern R. C.*, 26 L. J., C. P. 83); but this must be taken in a qualified sense, since it is laid down in *Bennett v. Manchester, Sheffield, and Lincolnshire R. C.*, 6 C. B. (N. S.) 707, that the statute was intended to afford a remedy against an undue preference, or prejudice to a particular individual or class in respect of the traffic on the railway, and was not intended to apply to the case of a breach or neglect by the company of a public duty, which was already susceptible, of redress by mandamus or by indictment (see also *Atty. Genl. v. Gt. Northern R. C.* 29 L. J., Ch. 801).

Apparent
preference
ground for
application
to the court.

Whenever there has been an apparent preference in respect of the conveyance of goods conceded by a railway company to certain persons to the prejudice of a complainant, there is sufficient ground to call upon the company for an explanation and justification of their conduct in the matter (*Garton v. Bristol and Exeter R. C.*, 28 L. J., C. P. 306).

On reviewing the cases the following general principles seem to have been established for the future guidance of the courts in deciding questions of undue preference :—

CAP. II.
SEC. V.

General principles of the cases.

1. That the fair interests of the railway itself are entitled to consideration ; but this must be understood as confined to interests in their capacity of railway proprietors, and over that part of the line in regard to which the complaint is made, and not extended to their interests in distinct capacities, or in undertakings in regard to which they virtually stand in the relation of third parties.

2. That due regard must be had to the circumstances which cause the trouble or expense of carrying to the company for one party, or in one case or set of circumstances, to be greater than in another, provided *perfect fairness* be shewn by the company in dealing with such differences. Hence due attention will be paid by the court to reasons for preferential dues arising out of long distances, large quantities, wholesale dealings with the company, and generally any other things which reduce the trouble and cost of carrying for one party as compared with another.

3. That preferences are unjust which are

CAP. II.
SEC. V.

given for considerations wholly irrespective of circumstances which could make the inconvenience and expenditure for carrying the preferred parties goods less than for others; so that preferences given to keep out competing lines which the preferred person threatens to promote, or to induce such person to employ the company on other lines or undertakings which they have in hand, or otherwise to benefit the company irrespective of the dues for carrying, have met with no favour from the court.

4. That preferential tariffs to deprive persons or localities of the natural advantages of their position—as to enable sea-borne to compete with land-borne coals, to encourage the merchandize of a remote place, or of dealers at a distance—are unreasonable.

“Terminal charges.”

A company entitled to demand certain tolls and rates for carriage are not allowed to charge any sum over and above as “a terminal charge,” unless empowered to do so by their special act (*Pegler v. Monmouthshire R. and Canal Company*, 30 L. J., Ex. 249). And where any charge shall have been made by a company in respect of the conveyance of goods over their railway, on written application within a week after payment of the said

Company bound to furnish particulars of charges.

charge made to the secretary of the company by the person by whom or on whose account the same has been paid, the company shall within 14 days render an account to the person so applying for the same, distinguishing how much of the said charge is for the conveyance of the said goods on the railway, including therein tolls for the use of the railway, for the use of carriages, and for locomotive power, and how much of such charge is for loading and unloading, covering, collection, delivery, and for other expenses, but without particularizing the several items of which the last mentioned portion of the charge may consist (31 and 32 Vic., c. 119, s. 17).

CAP. II.
SEC. V.
—

CHAPTER III.

THE TRANSIT.

SEC. I.—*Duty of the Company during the transit.*

CAP. III.
SEC. I.
—

Company
not liable for
ordinary
wear and
tear,

It is the duty of a railway company during the transit to use all such diligence and care towards the goods entrusted to them, that prudent and cautious men in the like business usually employ for the safety and preservation of the property confided to their charge. A company would not be liable for the ordinary wear and tear or chafing of goods during transit, nor for loss or damage from the ordinary decay or deterioration of fruits in the course of the journey from their inherent infirmity or nature, or from the ordinary diminution or evaporation of liquids, or ordinary leakage from casks (especially where the leakage arises from an imperfect bung in

the cask, *Hudson v. Baxendale*, 2 H. and N. 575), or from spontaneous combustion of goods, or from their tendency to effervescence or acidity, or from their not being properly put up and packed by the owner (*Story, Bail*, s. 492a). Yet though not responsible for fair wear and tear, they must use the ordinary precautions to lessen it as much as possible, as if a cask of brandy leak on the journey they must take steps to stop the leak when it comes to their knowledge, otherwise they will be liable for the loss (*Beck v. Evans*, 16 East, 244); and though not liable for ordinary deterioration of goods in quantity or quality from inherent infirmity, yet if the goods require airing or ventilation during the journey for the purposes of preservation, as fruits and such like articles sometimes do, they must do what is reasonably within their power for this purpose (*Davidson v. Gwynne*, 12 East, 382).

CAP. III.
SEC. I.
—

But must
use ordinary
precautions
to lessen it.

It has never been decided what, in the absence of special contract, are the liabilities of a railway company in respect to injuries inflicted, during the journey, by animals on themselves or each other through fear or restlessness, produced by the noise and motion of the journey. But in an action against a

Company's
liability for
self inflicted
injuries to
animals.

CAP. III.
SEC. I.

—

carrier by water where, in consequence of a storm, horses had broken down the partitions between one another and some were killed by kicking, the carrier was held not liable (*Gabay v. Lloyd*, 5 D. and R., 641), and it is presumed that if a railway company has used all reasonable care and proper precautions their liability will be no greater.

Goods injurious to each other not to be stowed together.

The company must take care not to forward in the same truck goods which from their proximity would be likely to damage each other: thus, they would be liable for injury to flour caused by the effluvia of spirits of turpentine, or damage to cambric goods caused by sulphuric acid if stowed near together (*Alston v. Herring*, 11 Ex. 82, the principle of which is applicable to railway companies, though the defendant was a shipper).

The directions of the owner must be obeyed.

The company must obey the directions of the owner of the goods during the transit; and a person who delivers goods to a railway company to carry, directed to a particular place, may countermand the direction at any moment of the transit and demand back his goods, at least on payment of the carriage, unless perhaps where the unpacking and delivering would be productive of much incon-

venience (*Scotthorn v. South Staffordshire R. C.*, 22 L. J., Ex. 121). CAP. III.
SEC. I.

Sometimes a railway company is placed in an awkward position by claims upon the goods of persons other than and adverse to the party who delivered them. For instance, they may be followed and claimed by the sender's landlord for rent, or by a sheriff's officer under a writ of execution. Adverse claimants.

Ordinarily the person who delivers the goods to the company is to be treated by them as the owner, and in general his title may not be disputed by the company, or a *jus. tertii* or adverse title be set up, but the goods must be delivered according to his directions. That applies, however, only where such adverse claim is not asserted by the superior claimant to the sender, but merely by the carrier's own motion. But should the goods be the property of a third person, who is also entitled to the possession of them, and while in the custody of the company such owner should demand possession, they would be justified in delivering the goods to him (*Taylor v. Plummer*, 3 M. and S., 562). Nor are they precluded by reason of having received goods from a particular individual from setting up the title of a third

CAP. III.
SEC. I.

party (*Sheridan v. New Quay Company*, 28 L. J., C. P. 58). In this case Mr. Justice Willes in delivering judgment said, "The defendants were common carriers; and therefore bound to receive the goods for carriage. They could make no enquiry as to the ownership. They have not voluntarily raised the question; it was raised by the demand of the real owner before the defendant had parted with the goods. The law would have protected them against the real owner if they had delivered the goods in pursuance of their employment without notice of his claim. It ought equally to protect them against the pseudo owner, from whom they could not refuse to receive the goods, in the present event of the real owner claiming the goods, and their being given up to him. The compulsory character of the employment of a carrier furnishes ample grounds for so holding."

Company
must deliver
to the right
person.

Still the company have upon them the burthen and risk of ascertaining who is the real owner, which in the complication of mercantile transactions is not always an easy task. Where the adverse title is made known to the carrier, if he is forbidden to deliver the goods to any other person, he acts at his

peril ; and if the adverse title is well founded, and he resists it, he is liable to an action for the recovery of the goods (*Story, Bail*, s. 582).

CAP. III.
SEC. I.

But a company may compel rival claimants to establish their title by garnishment and by interpleader (1 and 2 Wm. IV., c. 58, s. 1 ; and 23 and 24 Vic., c. 126, s. 12).

Interpleader

2. STOPPAGE IN TRANSITU.—If the seller has dispatched goods on credit to the buyer, and before they reach their destination the buyer becomes insolvent, the law, in order to prevent the loss that would happen to the seller, allows him in many cases to countermand the delivery before the arrival of the goods at the place of destination, and to cause them to be re-delivered to himself (*Lickbarrow v. Mason*, 1 Smith's Leading Cases 699).

SEC. II.

When the
right to stop
in transitu
exists.

The right to stop in transitu exists only where the following circumstances concur :—where the goods are sold on credit ; where the consignee is insolvent ; where the goods are still in transit, and have not been delivered to the consignee ; and where the buyer has not yet parted with the ownership to any bona fide purchaser without notice (*Story, Bail*, s. 581).

The person who stops in transitu must be a consignor or vendor. A mere surety for

Who may
stop.

CAP. III. the price of the goods has no right to do so
 SEC. II. (*Siffken v. Wray*, 6 East, 371).

—
 The right
 only exists
 while the
 goods are on
 the way.

This right can only exist while the goods are on the way. If they once arrive at the termination of their journey and come into the actual or constructive possession of the consignee, the vendor's right over them is at an end. If after their arrival at the place of destination they be warehoused with the company for the consignee's convenience (*Nicholls v. Lefevre*, 2 Bing., N. C. 83), or if at a place short of the ultimate destination they are to be at the orders of the consignee (*Wentworth v. Outhwaite*, 10 M. and W., 436), the transitus is at an end. In other words, the right to stop continues so long as the goods are in the custody of the company as carriers, and any part of their original instructions from the consignor remain to be performed. But where the company enters expressly or by implication into a new agreement distinct from the original contract of carriage, to hold the goods for the consignee or his agent, not for the purpose of expediting them to the place of original destination pursuant to that contract, but in a new character for the purpose of custody on his account, and subject to some new and further

order to be given to them, the transitus, so far as the consignor is concerned, is at an end, for the goods have constructively passed into the possession of the consignee (*Whitehead v. Anderson*, 9 M. and W., 518). CAP. III.
SEC. II.
—

To make a notice effective as a stoppage in transitu it must be given at such a time, and under such circumstances, that the company may by the exercise of reasonable diligence communicate it to their servants in time to prevent the delivery of the goods to the consignee (*Whitehead v. Anderson, supra*). Notice must
be given in
due time to
be effective.

CHAPTER IV.

TERMINATION OF A RAILWAY COMPANY'S
LIABILITY.SEC. I.—*Delivery to the Consignee.*CAP. IV.
SEC. I.Duration of
a company's
liability.

Delivery.

What
amounts to.

A railway company's liability runs from the moment of delivery to and acceptance by them or their agents until the moment when they deliver the goods actually or constructively to the consignee, or at the stipulated or authorized place of consignment (*Fowles v. Great Western R. C.*, 22 L. J., Ex. 76; *Moffat v. Same*, 15 L. T. (N. S.) 630). The delivery according to the circumstances of the case will be (1) to the actual consignee, (2) at a specified terminus, or (3) to an authorized agent.

The great practical difficulty in determining when a company's liability as carriers has terminated, lies in determining when they have made a complete delivery. As soon as the delivery is complete, and no

further duty remains to be done by them in their capacity as carriers, their liability as such ceases. A complete delivery and a terminated liability are in this case synonymous terms. So long as they retain possession of the goods, or have to perform any further duty either by custom or contract as carriers, they are responsible for their safety; but when the transit and the delivery are either completed or waived by the owner, then their responsibility ceases.

CAP. IV.
SEC. I.
—

The question in every case to determine the time at which the liability ends must be, what was the express contract, if there was one, or what was the implied contract if the goods were delivered to the company without an express contract? In the former case the duration of the liability will depend on the terms of the contract, and may therefore end at a point of time which falls far short of their implied common law liability. In the latter case the duration of the liability will in the majority of cases depend upon the custom of particular places, the usage of particular trades (*Story, Bail*, s. 543), or the nature of the thing to be delivered (*Rooth v. North Eastern R. Co.*, 36 L. J., Ex. 83).

CAP. IV.
SEC. I.

Delivery at
the place to
which goods
are directed.

Delivery
within
reasonable
hours.

There is a common law liability imposed upon companies to deliver goods at the place to which they are directed (*Duff v. Budd*, 6 Moore, 469). And where by the course of the company's business they are accustomed to deliver certain descriptions of goods and parcels by means of porters or servants at the dwellings or places of business of the consignees, their responsibility continues until an actual delivery in that manner (*Gatliffe v. Bourne*, 4 Bing. N. C. 314). It is not sufficient that the goods be carried in safety to the place of delivery. The company must, and without any demand upon them, deliver or tender and be ready to deliver the goods on receiving payment of their hire. The company having once tendered the goods to the consignee at the place to which they are directed have discharged themselves of their obligation (*Storr v. Crowley*, 1 M'Le and Y. 129). It has been decided by cases in the United States' Courts, which would probably be followed here (though I am aware of no English decision on the point), that if goods be tendered to a consignee late in the day, after the termination of the hours of business, and when the consignee has dismissed his hands, and is thus incapable of receiving and

putting away the goods, the tender of delivery is then unreasonable as to time, and the consignee is not guilty of laches in declining to receive them. Therefore the duty of the company under such circumstances is to keep the goods still in custody, and they continue to hold them under all their responsibility as carriers.

In cases where the company are not bound to deliver at the place of business of the consignee (as is usual with coal, lime, corn, &c.), they must within a reasonable time give notice of the arrival of the goods to the person to whom they are directed, unless indeed there is a very clear and uniform usage or custom to leave them at a particular place of deposit at the risk of the owner without giving him any notice; and he is bound to apply for and receive them there.

And when not bound to deliver the goods the company's responsibility as carriers will generally continue during such a period as the owner or consignee might by the use of diligence have had an opportunity of removing them (*Forward v. Pittard*, 1 T. R. 27; 2 Redfield's Railway Law, 56). When a reasonable time has elapsed without the consignee or owner removing them, they remain in the custody

CAP. IV.
SEC. I.

Company when not bound to deliver must give notice to the consignee unless there is a clear custom to the contrary.

Liability continues during a period reasonably sufficient for the customer to remove the goods.

CAP. IV.
SEC. I.

Customer
may waive
the right to
delivery at
the destina-
tion.

of the company as ordinary bailees—that is subject to a much less degree of liability.

However universal the custom may be to deliver goods to the owner at the place of destination, the parties may by their contract waive it, and if they do the company will be discharged (*Strong v. Natally*, 4 Bos. and Pull. 16); as if the owner after the arrival of the goods requests the company to let them remain in their warehouse until he can conveniently send for them, and they are deposited and afterwards destroyed by fire, the duty of the company as carriers being at an end, they are not responsible for the loss in that character (*In re Webb*, 8 Taunt 443). So if a man having no warehouse of his own, directs the company to leave the goods at their station until he should find it convenient to remove or sell them, the company's responsibility as carriers will terminate with the deposit (*Richardson v. Goss*, 3 Bos. and Pull. 119). And though the consignor order goods to be delivered at a particular place beyond the company's station, the company may deliver them (to be warehoused) at their station if they and the consignee so agree; and it makes no difference in this respect that the consignor cannot recover the

price of the goods from the consignee in consequence of there being no acceptance by the latter within the Statute of Frauds (*London and North Western R. C. v. Bartlett*, 31 L. J., Ex. 92). In all cases of this description the material consideration is whether the owner of the goods has taken any exclusive possession of the goods, or has terminated the custody of the company by any act of direction which does not flow from their duty as carriers (*Story, Bail*, ss. 541 and 542).

CAP. IV.
SEC. I.
—

In *Shepherd v. Bristol and Exeter R. C.*, (37 L. J., Ex. 113), the plaintiff sent cattle by the defendants' railway, intended for Islington market. Had the train kept its time the cattle would have arrived in London at 7 on Sunday morning, but it did not reach there until noon. As the police regulations prevented cattle being driven through the streets until midnight, they were placed in a pen at the station by the defendants' servants assisted by the plaintiff's servant, where the plaintiff found them shortly after. They were fed by the plaintiff; and his servant was left in charge with directions to bring them away at midnight. After midnight, when the plaintiff's servant went to fetch them away, he found two dead, and the de-

CAP. IV.
SEC. I.

defendants' servants would not allow him to take the rest away unless he signed a receipt for the whole. Afterwards the plaintiff came himself and took them away. It was held that the cattle had been delivered, and the defendants' liability was over before the damage occurred.

Liability of
company
throughout
the whole
transit.

In the transportation of goods between distant places, different modes of conveyance are often necessarily combined before they reach their destination—as for instance, independent lines of railway, canals, porters, and other carriers. In such cases the liability of the original contracting company continues throughout, if the transfer to third parties is only accessory to the discharge of the company's own duty or the fulfilment of their contract (as where they are to deliver at the house of the consignee and the third party is only a sub-contractor to deliver goods from their terminus; or where they contract to carry goods to their destination, not limiting their liability to their own terminus, and the third party is another railway), and all intermediate persons employed are regarded simply as their agents (*Macku v. London and South Western R. C.*, 17 L. J., Ex. 271). But if they receive goods to be forwarded from A.

Unless limited to their own terminus.

to C., their own line only extending from A. to B. (and they limit their liability to their own terminus), after which they are to be forwarded by a distinct conveyance to C., their liability ends when the goods are passed to the other carrier, and the owner must look to such third person in case of loss, the contract on the part of the original carrier being entirely determined (*Garside v. Trent Navigation Company*, 4 T. R. 581).

CAP. IV.
SEC. I.
—

2. CONSIGNEE'S REFUSAL TO RECEIVE.— SEC. II.

When the goods are refused by the consignee the company are bound through their agents to exercise reasonable care and foresight in the protection of the rights of the owner. The course which it may be necessary to pursue depends upon the nature of the goods, whether perishable or otherwise, bulky or in small compass, upon the facility of communication with the consignor, or owner, or his agents, and upon other local circumstances, as for example the accommodation for storing the goods at the place. It might be cattle which require to be fed, or fish, which twenty-four hours' detention would render valueless. There is no rule of law that the company must give notice to the

—
When goods are refused the company must protect the rights of the owner.

Not bound to give notice to the consignor.

CAP. IV.
SEC. II.

consignor of the refusal of the consignee to receive, though there are many cases in which it would be proper for them to do so ; under particular circumstances there might be no negligence in abstaining from giving such notice (*Hudson v. Baxendale*, 2 H. and N. 575).

Refused
goods should
be retained
for a reason-
able time at
the place to
which they
were sent.

In general a refused parcel should be retained for a reasonable time, if there is convenience for doing so, at the place to which it is sent. Thus in *Crouch v. Great Western R. C.*, 27 L. J., Ex. 345, a parcel was received by the company in London, for delivery at Plymouth. The parcel was tendered to the consignee who refused to receive it on the ground that the charge for carriage was excessive. On the following day he made application for it, tendering the sum demanded, but was informed that it had been sent back to London. The court held that this proceeding on the part of the company amounted to a breach of their duty of pursuing a reasonable line of conduct with reference to the circumstances, upon the parcel being declined. Channel, B. said, "Even supposing that in strictness the duty of the defendants as carriers ended with the tender of the parcel on the 28th, and the refusal of the con-

signee then to accept it and pay for the carriage, it cannot, we think, be doubted that the defendants had another duty to perform, and that it was their duty to take care of the goods of the consignor (who in this case was plaintiff), and that the duty was one springing out of their original employment as carriers. This duty we think called upon the defendants to retain the parcel at Plymouth, its place of destination, at least for a reasonable time, and during that time to await any directions from, if not to communicate with, the consignor."

CAP. IV.
SEC. II.

When the consignee is dead, or after reasonable search and enquiry cannot be found, the company should retain the goods simply as warehousemen, until further instructions be received from the consignor.

When the consignor cannot be found.

3. DELIVERY WITHIN A REASONABLE TIME. SEC. III.

—If there is an express contract to deliver within a prescribed time, no temporary obstruction, or even the absolute impossibility of complying with the engagement, will be a defence to an action for failure in performing the contract (*Robinson v. Dunmore*, 2 Bos. and P. 417).

Terms of an express contract binding, notwithstanding fulfillment is impossible.

CAP. IV.
SEC. III.

When no
time is fixed
delivery
must be
within rea-
sonable time

If no particular time is fixed upon for delivery of goods, there is no rule of law requiring the company to carry within a specific time (*Donahoe v. London and North Western R. C.*, 15 W. R. 792), but they are bound in all cases to make a proper delivery with reasonable expedition; for the duty to deliver within a reasonable time is a term engrafted by legal implication upon a promise or duty to carry generally (*Raphael v. Pickford*, 5 M. and G. 558).

A "reason-
able time"
depends
upon cir-
cumstances.

What is "a reasonable time" may depend upon a variety of circumstances, such as the nature of the goods and the ordinary course of business of the company (*Wren v. Eastern Counties R. C.*, 1 L. T. (N. S.) 5). A company's first duty is to carry safely, and they are justified in incurring delay when necessary to secure that (*Great Northern R. C.*, v. *Taylor*, 35 L. J., C. P. 210).

Not liable
for delay
caused by
the act of
God.

If the delay is caused by the act of God the company are not liable, if they use reasonable means to carry the goods to their destination; as where the delay is caused by a freshet sweeping away a railway bridge (*Lipford v. Charlotte R. C.*, 7 Rich. 409); and if a snow storm occurs which makes it impossible to carry the goods without extra-

ordinary efforts, involving additional expense, the company are not bound to use such means and incur such expense (*Briddon v. Great Northern R. C.*, 27 L. J., Ex. 51). They are responsible only for the exertion of due diligence, and delay in delivery may be excused if caused by accident or misfortune, although not inevitable; as where the delay occurred by reason of an accident on the defendant's line, such accident being caused wholly by the negligence of another company which had running powers over the defendant's line (*Gt. Northern R. C. v. Taylor, supra*). It is enough if the company use proper endeavours to prevent delay. In other words, the extraordinary responsibility of railway companies as common carriers does not require that that responsibility should be extended to the time occupied in transportation (*Hadley v. Clarke*, 8 T. R. 259).

CAP. IV.
SEC. III.

Nor by accident even if not inevitable.

If a railway company is well equipped and a delay is occasioned by an unusual influx of business beyond the immediate capacity of the road, and the goods are transported as expeditiously as possible in the then condition of the road and business, the company is not liable for delay (*Angell on Carriers*, p. 252); but if the influx is such that the company

Delay caused by unusual influx of business.

CAP. IV.
SEC. III.

might have anticipated and made preparations for, they will be liable for an omission to do so. Thus in *Wallace v. Southern and Western R. C. of Ireland*, 17 W.R. 464 (Ir. Q. B.) the plaintiff on the 10th of Sept. delivered machinery at D, to the defendant company, to be delivered at W. The machinery was sent from D, and in the ordinary course of traffic would have reached W on the 11th of Sept., but when it arrived at B, an intermediate station, the rails were in a slippery condition and a great increase of traffic had taken place there. The company's servants therefore uncoupled the trucks containing the plaintiff's machinery and substituted trucks which had been left behind by a previous train. The machinery was thus delayed, and arrived too late for the purpose it was intended for. The company had taken no precautions to provide for the extra traffic, though they might have anticipated it, and they were held liable for not delivering within a reasonable time. George, J. said "*The state of the rails might have excused the company if they merely left behind at B the waggons containing the machinery ; but as they substituted for these waggons certain other waggons, I think their conduct was not justifiable. Be-*

sides, they took no precautions to prepare for the additional traffic which they *might have anticipated* in consequence of there being a cattle fair at K.”

CAP. IV.
SEC. III.

If the company only profess to run trains for a certain class of traffic at stated intervals, it will be within a reasonable time if they carry in due course according to their profession ; but in a case in which a company received cattle for carriage, and it did not appear that there were any ordinary cattle trains on the line, it was held to be properly left to the jury to say what was a reasonable time within which to convey the cattle and therefore whether the company were bound to send them by a special train (*Donahoe v. Lond. & North Western R. C.*, 15 W. R. 792).

4. NON-DELIVERY.—In an action against a company for loss of goods it is sufficient evidence of non-delivery to show that the goods never reached the consignee (*Gilbart v. Dale*, 5 Ad. & El. 543). In *Griffiths v. Lee*, 1 C. & P. 110, the consignor stated that he gave the parcel in question to the carrier's servant properly addressed to the consignee : the consignee's servant stated that he did not know of the delivery and believed that the parcel could

SEC. IV.

Proof of non-delivery.

CAP. IV.
SEC. IV.

not have been delivered without his knowledge, it was held by Hullock, B. sufficient prima facie evidence of non-delivery. And where one of several parcels addressed to several parties was abstracted from a hamper, the company was held liable, although the hamper was made up of a number of such parcels; and it being proved that the parcel was placed in the hamper with the others, and that the hamper was delivered at its destination securely corded, there was sufficient evidence to justify the jury in finding that the missing parcel had been stolen in the course of transit by the company's servants (*Crouch v. Lond. and North Western R. C.*, 2 Car. and K. 789).

So evidence that the weight or amount of goods delivered to the consignee is less than the weight or amount of goods delivered to the carrier is sufficient, prima facie, to charge the latter for the deficiency, or to call on him to show that it did not arise from his negligence (*Hawkes v. Smith*, C. and M. 72).

What excuses non-delivery.

We have seen that railway companies are not responsible for loss occasioned by the act of God or the king's enemies. If damage or loss has been occasioned by the act of man the company cannot avail themselves of it as

an excuse for the non-delivery of the goods (*Oakley v. Portsmouth, etc., Steam Packet Company*, 25 L. J., Ex. 99). Thus where an action was brought against a common carrier for not safely carrying and delivering a quantity of hops, and it appeared that a fire broke out in a building adjoining a booth under which the carrier had placed the hops, and burnt with inextinguishable violence, and extended itself to the hops and consumed them, without any neglect or default of the carrier, it was held that inasmuch as the fire had not been occasioned by lightning but by the act of man, the occurrence of the disaster constituted no answer to the action (*Hyde v. Trent and Mersey Navigation Company*, 5 T. R. 389).

CAP. IV.
SEC. IV.
—

And on the other hand, though the loss may have been occasioned by what is strictly speaking the act of God, all the attendant circumstances must be regarded to see whether the loss was such as may be reasonably considered inevitable so as to excuse non-delivery. If an uncommon or unexpected danger arise, the company must use efforts proportioned to the emergency to ward it off (*Leck v. Maestaer*, 1 Camp. 138), and a failure to use such efforts would make the loss oc-

Company
bound to use
efforts pro-
portioned to
the emer-
gency to
ward off
danger.

CAP. IV. occasioned thereby clearly referable to the negligence of man, rather than the act of God.
SEC. IV.

Misconduct
of a third
person.

If the loss is occasioned by the misconduct of a third person, and not through any fault or neglect on the part of the company, the latter are nevertheless responsible to the owner, as they have themselves a remedy over against the offending party (*Trent Navigation Company v. Ward*, 3 Esp. 130). But if the misconduct of the third person is caused by the orders of the owner of the goods, the company will not of course be responsible (*Butterworth v. Brownlow*, 34 L. J., C. P. 267).

Fraud by the
customer.

A company will not be liable for loss caused by the fraud of the customer, as where he does anything to disguise the nature of the goods (*Walker v. Jackson*, 10 M. and W. 161), or to lull the vigilance of the company by treating a valuable parcel as of no or only ordinary value (*Sleat v. Fagg*, 5 B. and Ald. 342), so as to prevent them from taking any particular care of it, and yet not so completely concealing its nature as to prevent it from being selected for depredation by a dishonest servant, and the loss is the consequence of the means the customer has adopted (*Bradley v. Waterhouse*, M. and M. 154) for

the holding out by the consignor as an ordinary risk, what is in reality an extraordinary risk, is a legal fraud (*per Bayley J. Batson v. Donovan*, 4 B. and Ald. 37).

CAP. IV.
SEC. IV.

Defective packing and securing, though ground for a company refusing to receive goods, will not excuse their loss; thus it was held no defence for loss of a dog that it was not properly secured when delivered to the carrier (*Stuart v. Crawley*, 2 Stark, 323); and in an action for damages, the fact that the damage was partly caused by bad packing was held only to lessen the amount of damages (*Higginbotham v. Great Northern R. C.*, 10 W. R. 358); and in an action for injury to two casks of oil, alleged to have arisen from defects of the casks, it was left to the jury to say whether the loss arose from such defects, and whether, even if it did, the company knew or ought to have known thereof and had acted negligently in sending them on in that state (*Cox v. London and North Western R. C.*, 3 F. and F. 77).

Defective
packing.

5. LIEN.—A railway company have a right to detain goods which they have received to be carried until the charges of carrying have been paid to them by the owner or employer

SEC. V.

Lien on
goods car-
ried.

CAP. IV. (Skinner v. Upshaw, 2 Ld. Raym. 752). And
 SEC. V. they have the same right when goods have
 — been delivered to them by a wrongful owner
 and are claimed by a rightful owner, to detain them from the latter until their charges are paid (Holt, C. J. in *Yorke v. Greenhaugh*, 2 Ld. Raym. 867).

A general
 lien by statute.

Differing from other carriers in this respect railway companies have by statute a general lien on goods in their hands as carriers. They may detain and if necessary sell such goods, not only for charges applicable thereto, but also for other charges due from the owner in respect of other goods carried in his behalf (*In re Northfield Iron & Steel Co.*, 14 L. T. (N. S.) 695).

Section 97 of the Railway Clauses Consolidation Act provides as follows :—

“ If, on demand, any person fail to pay the tolls due in respect of any carriage or goods, it shall be lawful for the company to detain and sell such carriage, or all or any part of such goods, or if the same shall have been removed from the premises of the company, to detain and sell any other carriages or goods within such premises belonging to the party liable to pay such tolls, and out of the monies arising from such sale to retain the tolls pay-

able as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, of the monies arising by such sale, and such of the carriages or goods as shall remain unsold, to the person entitled thereto; or it shall be lawful for the company to recover any such tolls by action at law" (as to their power to detain goods see *Green v. St. Katherine Dock Co.*, 19 L. J., Q. B. 53, where the language of the special act of the company was similar to this section, except that the words "within such premises" were omitted).

CAP. IV.
SEC. V.
—

This section would not, however, justify the company claiming against the vendor who has stopped the goods in transitu, any right to retain or sell such goods in respect of claims for tolls against the vendee (*Jackson v. Nichols*, 7 Scott 577; *Oppenheim v. Russell*, 1 N. R. 42).

Lien on
goods
stopped in
the transit.

A demand for the sum actually due for tolls is a condition precedent to the right to sell (*Field v. Newport, &c. R. Co.*, 27 L. J., Ex. 396), and where the amount is paid by a bill which on presentment is dishonoured, that is not a demand and refusal entitling the company to sell the customer's goods (*North v. Lond. & North Western R. Co.*, 32 L. J., C. P., 156).

A demand
necessary be-
fore sale.

CAP. IV.
SEC. V.

Company
may not use
goods.

Lien only on
goods in the
company's
possession as
carriers.

In no case have the company a right to use the goods detained by them. And if perishable articles be detained they are bound to exercise every care in their preservation, and if horses or cattle be detained the company should feed them, and in the case of cows milk them (*Scarfe v. Morgan*, 4 M & W. 270).

The right of lien can only apply to goods, &c., in the possession of the company in their character of carriers or in a capacity accessory thereto, and not to goods delivered to them in some independent capacity, as where the company have a workshop for repairing engines, repairing for strangers as well as themselves, they would not be justified in detaining the engine of a customer in their possession for repair, in respect of a sum due to them for carriage (*Kinnear v. Midland R. C.*, 19 L. T. (N. S.) 387).

CHAPTER V.

DAMAGES.

Except when non-delivery is excused by CAP. V.
any of the reasons mentioned in sec. 4, cap. 4, —
the owner of goods is entitled to recover their Customer
may recover
value of
goods when
lost.
value in case they are lost, destroyed, or
stolen while in the possession of the company
as carriers. He is also entitled to damages
in certain cases where undue delay has trans-
pired in forwarding goods to their destination.
So that the damage claimed may be either
(1) for actual loss, *i.e.*, of the goods themselves,
or (2) consequential loss, *i.e.*, loss of profit,
market, etc.

1. ACTUAL LOSS.—If the goods consist of SEC. I.
articles within the Carriers' Act the owner may —
recover, not the value declared at the time of Articles
within the
Carriers' Act
sending, but the actual proved value, together
with the amount paid (if any) for carriage, in-
cluding the increased rate (secs. 7 and 9).

If the customer makes a false declaration Animals
within the
Railway and
Canal Traffic
Act.
of the value of animals within the Railway

CAP. V.
SEC. I.
—

and Canal Traffic Act, so as to induce the company to carry them on lower terms, and they are injured by the company's negligence, he cannot recover more than the declared value (*McCance v. London and North Western R. C.*, 34 L. J., Ex. 39).

Customer to
be allowed
value of
goods at
place of con-
signment.

The measure of damages to be allowed on loss of goods is their market value at the place to which they were consigned, as distinguished from the place at which they were delivered to the company (*Rice v. Baxendale*, 30 L. J., Ex. 371), at the time they ought to have reached their destination (*Brandt v. Bowlby*, 2 B. and Ad. 932); and if this test is inapplicable by reason of there being no market for goods of the description at the place of delivery, the jury in assessing the damages must ascertain the cost price of the goods and the expense of transit, if any, and add to these items such a sum for importer's profits as in their discretion shall appear reasonable (*O'Hanlan v. Great Western R. C.*, 34 L. J., Q. B. 154). And in a recent case, where an article of machinery had been lost on the way, the owner was held entitled to the replacing of the article at the end of the transit, with 5 per cent. interest on the amount until judgment (*British Columbia Saw Mill Company v. Nettleship*, 3 L. R., C. P. 499).

But a company are responsible, on the loss of goods, only for the reasonable consequences of their breach of contract; so that where a plan and models sent to compete for a prize were lost, the proper measure of damages was held to be the value of labour and materials expended in making the article, and not damages from losing the chance of obtaining the prize, the latter being too remote a ground of damages (*Lythgoe v. East Anglia R. C.*, 15 Jurist, 400).

CAP. V.
SEC. I.Company
only liable
for the rea-
sonable con-
sequences of
loss of goods

The value allowed will be the real and not the fancy value or *pretio affectionis* which the owner may set upon the goods.

Real and not
fancy value
of goods al-
lowed.

If the goods are only partially destroyed or deteriorated the same principles are applicable as in case of total loss (*Collard v. South Eastern R. C.*, 30 L. J., Ex. 393).

Partial loss.

2. CONSEQUENTIAL LOSS.—The most ordinary claims are those for loss of market by the arrival of the goods too late at the place to which they are sent, or loss of profit by the owner or his agents being deprived of the goods in his trade or business. To entitle the customer to damages in such cases the company must have notice, at the time of delivery to them, that it is of vital importance

SEC. II.

Loss of mar-
ket.

CAP. V.
SEC. II.
—

the goods should reach their destination by a fixed time or at the earliest possible period. In many cases of claims for loss of market the company have constructive notice from the apparent nature of the goods, their destination, or from previous dealings, that they are being sent to a particular market, and therefore they are clearly bound to recompense the owner the reasonable loss flowing from his being disappointed of the market; and where the customer stipulates that the goods shall be sent the same evening a special contract is created, and the company may be sued for the breach of it (*Pickford v. Grand Junction R. C.*, 12 M. and W. 766).

Loss of profit

In cases of claims for loss of profits the importance of expeditious transit can seldom be known from extraneous circumstances, so that the owner would not be entitled to damages unless actual notice were communicated to the company of the extraordinary consequences likely to result from want of expedition in forwarding the articles (*Prior v. Wilson*, 8 W. R. 260). But even in the absence of such knowledge they are liable for loss when they have not carried with reasonable expedition (*Hales v. London and North Western R. C.*, 4 B. and S. 66); and if their

ordinary course of business is inconsistent with reasonably early transit, it is no answer to an action for damages arising from delay that they carried at the ordinary rate at which they conducted their business (*Blakemore v. Lancashire and Yorkshire R. C.*, 1 F. and F. 76).

CAP. V.
SEC. II.

Where the delivery of a shaft was delayed an unreasonable time, by which a mill was stopped, it was held that inasmuch as the carrier had no notice that the profits of the mill would be thereby stopped he would not be liable for the loss thereof (*Hadley v. Baxendale*, 9 Ex. 341, explained by *Prior v. Wilson*, *supra*). And where the plaintiff, a clothier, sent a parcel of goods to his traveller at C. without notice to the company of the objects for which the goods were sent, and their delivery was, through the company's negligence, delayed until after the traveller left C., and the plaintiff in consequence lost the profits which he would have derived from sales at C.; it was held that in the absence of notice to the company of the objects for which the goods were sent, the plaintiff could not recover such profits as damages for the delay (*Gt. Western R. C. v. Redmayne*, 35 L. J., C. P. 123).

Loss of profit

CAP. V.
SEC. II.

Loss of
wages.

Hotel ex-
penses.

Loss of
wages and
profits.

Loss of sea-
son.

In an action for delay in delivering skins for making gloves the plaintiff was held not entitled to recover the loss in wages paid to workmen kept idle in consequence of their non-arrival (*Le Peintur v. South Eastern R. C.*, 2 L. T. (N. S.) 170). So a commercial traveller was not allowed his hotel expenses during two days which he had been delayed by the non-arrival of his case of goods sent by luggage train without any intimation of any kind respecting it (*Woodger v. Great Western R. C.*, 36 L. J., C. P. 177).

In *Gee v. Lancashire and Yorkshire R. C.* 30 L. J., Ex. 11, the plaintiffs were not allowed to recover loss of wages paid to workpeople and of profits they would have made, in consequence of their mill being stopped through failure of the company to deliver cotton within their usual time: for though they had communicated the fact of their mill being stopped in consequence of non-delivery, to the servants of the company at the place of destination, they had not done so at the time and place of delivery.

In *Wilson v. Lancashire and Yorkshire R. C.*, 30 L. J., C. P. 232, where an action was brought against a company for damages for loss sustained by delay in delivery of

cloth, by which the plaintiff, who was a cap maker, lost the season for making it into caps and so disposing of it; it was held that although the plaintiff could not recover his loss of profits, yet the jury might take into consideration the deterioration in the marketable value of the cloth, by reason of the season having passed for making caps.

CAR. V.
SEC. II.

In *Crouch v. Great Northern R. Co.*, 25 L. J., ^{Loss of business.} Ex. 137, where a company refused to carry, at the ordinary rate, packed parcels for a carrier, whereby he was obliged to send them a more circuitous route at a greater expense, it was held that he was not entitled to recover damages for alleged loss of business, as the declaration was framed; but, per Martin, B., if the fact had been that the plaintiff was a carrier whose business consisted in collecting goods to be forwarded by the defendants' railway, and the defendants designedly refused to carry his goods, which they were bound by law to do, in order to obtain a monopoly and destroy the plaintiff's business, under such circumstances a jury would be justified in giving very heavy damages.

No damages can be recovered which are incapable of being specifically stated and appreciated. ^{The loss must be an appreciable one.}

CAP. V.
SEC. II.

ciated, as for instance, any inconvenience or vexation the plaintiff may have suffered (*Hamlin v. Great Northern R. C.*, 26 L. J., Ex. 20).

Principles of
the cases.

The cases decided on claims for loss of profit seem to have established the following principles :—

1. That damages will not be allowed unless the consequences of delay are communicated to the company at the time and place of delivery to them.

2. That only such loss can be recovered as was reasonably contemplated by both parties at the time the contract for carriage was made, and not loss arising out of circumstances then wholly unknown to the company.

3. That damages will be given only for the reasonable and proximate, and not for the remote consequences of the breach of contract.

The owner
must be
plaintiff in
an action for
damages.

In an action for damages care must be taken that the owner of the goods is made plaintiff. The rule is that where goods are consigned to a vendee, the consignee is the proper person to sue, for the consignor was his agent to retain the company as carriers (*Davies v. Peek*, 8 T. R. 330). But it is otherwise if the goods were sent merely for

approval (*Swain v. Shepherd*, 1 M. and Rob. 224), or the property in the goods did not pass to the consignee by reason of the Statute of Frauds (*Coombs v. Bristol and Exeter R. Co.*, 3 H. and N. 510), or the consignee is the agent of the consignor (*Sargent v. Morris*, 3 B. and Ald. 277), or the company has contracted to be liable to the consignor in consideration of the latter's being responsible for the price of carriage (*Moore v. Wilson*, 1 T. R. 659). In these cases the consignor will be the party to sue.

CAP. V.
SEC. II.
—

APPENDIX.

CARRIERS' ACT.

I WILL. IV., CAP. 68.

An Act for the more effectual Protection of Mail Contractors, Stage Coach Proprietors, and other common Carriers for Hire, against the Loss of or Injury to Parcels or Packages delivered to them for Conveyance or Custody, the Value and Contents of which shall not be declared to them by the Owners thereof.—
[23rd July, 1830].

Whereas by reason of the frequent practice of bankers and others of sending by the public mails, stage coaches, waggon, vans, and other public conveyances by land for hire, parcels and packages containing money, bills, notes, jewellery, and other articles of great value in small compass, much valuable property is rendered liable to depredation, and the responsibility of mail contractors, stage coach proprietors, and common carriers for hire is greatly increased : and whereas through the frequent omission by persons sending such parcels and packages to notify the value and nature of the contents thereof, so as to enable such mail contractors, stage coach proprietors, and other common carriers, by due diligence, to protect themselves against losses arising from their legal responsibility, and the difficulty of

fixing parties with knowledge of notices published by such mail contractors, stage coach proprietors, and other common carriers, with the intent to limit such responsibility, they have become exposed to great and unavoidable risks, and have thereby sustained heavy losses: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act no mail contractor, stage coach proprietor, or other common carrier by land for hire shall be liable for the loss of or injury to any article or articles or property of the descriptions following; (that is to say), gold or silver coin of this realm or of any foreign State, or any gold or silver in a manufactured or unmanufactured state, or any precious stones, jewellery, watches, clocks, or time-pieces, of any description, trinkets, bills, notes of the Governor and Company of the Banks of England, Scotland and Ireland respectively, or of any other bank in Great Britain or Ireland, orders, notes, or securities for payment of money, English or foreign, stamps, maps, writings, title deeds, paintings, engravings, pictures, gold or silver plate or plated articles, glass, china, silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials, furs, or lace, or any of them, contained in any parcel or package which shall have been delivered, either to be carried for hire or to accompany the person of any passenger in any mail or stage coach or other public conveyance, when the value of such article or articles or property aforesaid contained in such parcel or package shall exceed the sum of ten pounds, unless at the time of the

delivery thereof at the office, warehouse, or receiving house of such mail contractor, stage coach proprietor, or other common carrier, or to his, her, or their book-keeper, coachman, or other servant, for the purpose of being carried or of accompanying the person of any passenger as aforesaid the value and nature of such article or articles or property shall have been declared by the person or persons sending or delivering the same, and such increased charge as hereinafter mentioned, or an engagement to pay the same, be accepted by the person receiving such parcel or package.

II. And be it further enacted, that when any parcel or package containing any of the articles above specified shall be so delivered, and its value and contents declared as aforesaid, and such value shall exceed the sum of ten pounds, it shall be lawful for such mail contractors, stage coach proprietors, and other common carriers to demand and receive an increased rate of charge to be notified by some notice affixed in legible character in some public and conspicuous part of the office, warehouse, or other receiving house where such parcels or packages are received by them for the purpose of conveyance, stating the increased rates of charge required to be paid over and above the ordinary rate of carriage as a compensation for the greater risk and care to be taken for the safe conveyance of such valuable articles; and all persons sending or delivering parcels or packages containing such valuable articles as aforesaid at such office shall be bound by such notice, without further proof of the same having come to their knowledge.

III. Provided always, and be it further enacted, that when the value shall have been so declared, and the increased rate of charge paid, or an engagement to pay the

same shall have been accepted as hereinbefore mentioned, the person receiving such increased rate of charge or accepting such agreement shall, if thereto required, sign a receipt for the package or parcel, acknowledging the same to have been insured, which receipt shall not be liable to any stamp duty; and if such receipt shall not be given when required, or such notice as aforesaid shall not have been affixed, the mail contractor, stage coach proprietor, or other common carrier as aforesaid shall not have or be entitled to any benefit or advantage under this act, but shall be liable and responsible as at the common law, and be liable to refund the increased rate of charge.

IV. Provided always, and be it enacted, that from and after the first day of September now next ensuing no public notice or declaration heretofore made or hereafter to be made shall be deemed or construed to limit or in anywise affect the liability at common law of any such mail contractors, stage coach proprietors, or other public common carriers as aforesaid, for or in respect of any articles or goods to be carried and conveyed by them; but that all and every such mail contractors, stage coach proprietors, and other common carriers as aforesaid shall from and after the said first day of September be liable, as at the common law, to answer for the loss of any injury to any articles and goods in respect whereof they may not be entitled to the benefit of this act, any public notice or declaration by them made and given contrary thereto, or in anywise limiting such liability, notwithstanding.

V. And be it further enacted, that for the purpose of this act, every office, warehouse, or receiving house which shall be used or appointed by any mail con-

tractor or stage coach proprietor or other such common carrier as aforesaid for the receiving of parcels to be conveyed as aforesaid, shall be deemed and taken to be the receiving house, warehouse, or office of such mail contractor, stage coach proprietor, or other common carrier; and that any one or more of such mail contractors, stage coach proprietors, or common carriers shall be liable to be sued by his, her, or their name or names only; and that no action or suit commenced to recover damages for loss or injury to any parcel, package, or person, shall abate for the want of joining any co-proprietor or co-partner in such mail, stage coach, or other public conveyance by land for hire as aforesaid.

VI. Provided always, and be it further enacted, that nothing in this act contained shall extend or be construed to annul or in anywise affect any special contract between such mail contractor, stage coach proprietor, or common carrier, and any other parties, for the conveyance of goods and merchandises.

VII. Provided also, and be it further enacted, that where any parcel or package shall have been delivered at any such office, and the value and contents declared as aforesaid, and the increased rate of charges been paid, and such parcels or packages shall have been lost or damaged, the party entitled to recover damages in respect of such loss or damage shall also be entitled to recover back such increased charges so paid as aforesaid, in addition to the value of such parcel or package.

VIII. Provided also, and be it further enacted, that nothing in this act shall be deemed to protect any mail contractor, stage coach proprietor, or other common carrier for hire from liability to answer for loss or injury to any goods or articles whatsoever arising from

the felonious acts of any coachman, guard, book-keeper, porter, or other servant in his or their employ, nor to protect any such coachman, guard, book-keeper or other servant from liability for any loss or injury occasioned by his or their own personal neglect or misconduct.

IX. Provided also, and be it further enacted, that such mail contractors, stage coach proprietors, or other common carriers for hire shall not be concluded as to the value of any such parcel or package by the value so declared as aforesaid, but that he or they shall in all cases be entitled to require, from the party suing in respect of any loss or injury, proof of the actual value of the contents by the ordinary legal evidence, and that the mail contractors, stage coach proprietors, or other common carriers as aforesaid, shall be liable to such damages only as shall be so proved as aforesaid, not exceeding the declared value, together with the increased charges as before mentioned.

X. And be it further enacted, that in all actions to be brought against any such mail contractor, stage coach proprietor, or other common carrier as aforesaid, for the loss of or injury to any goods delivered to be carried, whether the value of such goods shall have been declared or not, it shall be lawful for the defendant or defendants to pay money into court in the same manner and with the same effect as money may be paid into court in any other action.

XI. And be it further enacted, that this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded.

RAILWAY AND CANAL TRAFFIC
REGULATION ACT.

17 & 18 VICT. CAP. 31.

*An Act for the better Regulation of the Traffic on
Railways and Canals*—[10th July, 1854.]

Whereas it is expedient to make better provision for regulating the traffic on railways and canals: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. In the construction of this act "the Board of Trade" shall mean the Lords of the Committee of Her Majesty's Privy Council for Trade and Foreign Plantations:

The word "traffic" shall include not only passengers, and their luggage, and goods, animals, and other things conveyed by any railway company or canal company, or railway and canal company, but also carriages, waggon, trucks, boats, and vehicles of every description adapted for running or passing on the railway or canal of any such company:

The word "railway" shall include every station of or belonging to such railway used for the purposes of public traffic: and,

The word "canal" shall include any navigation whereon tolls are levied by authority of Parliament, and also the wharves and landing places of and

belonging to such canal or navigation, and used for the purposes of public traffic :

The expression "railway company," "canal company," or "railway and canal company," shall include any person being the owner or lessee of or any contractor working any railway or canal or navigation constructed or carried on under the powers of any act of Parliament :

A station, terminus, or wharf shall be deemed to be near another station, terminus, or wharf when the distance between such stations, termini, or wharves shall not exceed one mile, such stations not being situate within five miles from St. Paul's Church, in London.

II. Every railway company, canal company, and railway and canal company, shall, according to their respective powers, afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways and canals belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles; and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever; and every railway company and canal company and railway and canal company having or working railways or canals which form part of a continuous line of railway or canal or railway and canal communication, or which have the terminus,

station, or wharf of the one near the terminus, station, or wharf of the other, shall afford all due and reasonable facilities for receiving and forwarding all the traffic arriving by one of such railways or canals by the other, without any unreasonable delay, and without any such preference or advantage, or prejudice or disadvantage, as aforesaid, and so that no obstruction may be offered to the public desirous of using such railways or canals or railways and canals as a continuous line of communication, and so that all reasonable accommodation may, by means of the railways and canals of the several companies, be at all times afforded to the public in that behalf.

III. It shall be lawful for any company or person complaining against any such companies or company of anything done, or of any omission made in violation or contravention of this act, to apply in a summary way by motion or summons, in England, to Her Majesty's Court of Common Pleas at Westminster, or in Ireland to any of Her Majesty's Superior Courts in Dublin, or in Scotland to the Court of Session in Scotland, as the case may be, or to any judge of any such court; and, upon the certificate to Her Majesty's Attorney-General in England or Ireland, or Her Majesty's Lord Advocate in Scotland, of the Board of Trade alleging any such violation or contravention of this act by any such companies or company, it shall also be lawful for the said Attorney-General or Lord Advocate to apply in like manner to any such court or judge, and in either of such cases it shall be lawful for such court or judge to hear and determine the matter of such complaint; and for that purpose, if such court or judge shall think fit, to direct and prosecute, in such mode and by such

engineers, barristers, or other persons as they shall think proper, all such inquiries as may be deemed necessary to enable such court or judge to form a just judgment on the matter of such complaint; and if it be made to appear to such court or judge on such hearing, or on the report of any such person, that anything has been done or omission made, in violation or contravention of this act, by such company or companies, it shall be lawful for such court or judge to issue a writ of injunction or interdict, restraining such company or companies from further continuing such violation or contravention of this act, and enjoining obedience to the same; and in case of disobedience of any such writ or injunction or interdict it shall be lawful for such court or judge to order that a writ or writs of attachment, or any other process of such court incident or applicable to writs of injunction or interdict, shall issue against any one or more of the directors of any company, or against any owner, lessee, contractor, or other person failing to obey such writ of injunction or interdict; and such court or judge may also, if they or he shall think fit, make an order directing the payment by any one or more of such companies of such sum of money as such court or judge shall determine, not exceeding for each company the sum of two hundred pounds for every day, after a day to be named in the order, that such company or companies shall fail to obey such injunction or interdict; and such moneys shall be payable as the court or judge may direct, either to the party complaining, or into court to abide the ultimate decision of the court, or to Her Majesty, and payment thereof may, without prejudice to any other mode of recovering the same, be

enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by decree or judgment in any Superior Court at Westminster or Dublin, in England or Ireland, and in Scotland by such diligence as is competent on an extracted decree of the Court of Session; and in any such proceeding as aforesaid, such court or judge may order and determine that all or any costs thereof or thereon incurred shall and may be paid by or to the one party or the other, as such court or judge shall think fit; and it shall be lawful for any such engineer, barrister, or other person, if directed so to do by such court or judge, to receive evidence on oath relating to the matter of any such inquiry, and to administer such oath.

IV. It shall be lawful for the said Court of Common Pleas at Westminster, or any three of the judges thereof, of whom the Chief Justice shall be one, and it shall be lawful for the said courts in Dublin, or any nine of the judges thereof, of whom the Lord Chancellor, the Master of the Rolls, the Lords Chief Justice of the Queen's Bench and Common Pleas, and the Lord Chief Baron of the Exchequer, shall be five, from time to time to make all such general rules and orders as to the forms of proceeding and process, and all other matters and things touching the practice and otherwise in carrying this act into execution before such courts and judges, as they may think fit, in England or Ireland, and in Scotland it shall be lawful for the Court of Session to make such acts of sederunt for the like purpose as they shall think fit.

V. Upon the application of any party aggrieved by the order made upon any such motion or summons as

aforesaid, it shall be lawful for the court or judge by whom such order was made, to direct, if they think fit so to do, such motion or application on summons to be reheard before such court or judge, and upon such rehearing to rescind or vary such order.

VI. No proceeding shall be taken for any violation or contravention of the above enactments, except in the manner herein provided ; but nothing herein contained shall take away or diminish any rights, remedies, or privileges of any person or company against any railway or canal or railway and canal company under the existing law.

VII. Every such company as aforesaid shall be liable for the loss of or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability ; every such notice, condition, or declaration being hereby declared to be null and void : provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding, and delivering of any of the said animals, articles, goods, or things, as shall be adjudged by the court or judge before whom any question relating thereto shall be tried to be just and reasonable : provided always, that no greater damages shall be recovered for the loss of or for any injury done to any of such animals, beyond the sums hereinafter mentioned ; (that is to say), for any horse fifty pounds ; for any neat cattle, per head, fifteen pounds ; for any sheep or

pigs, per head, two pounds ; unless the person sending or delivering the same to such company shall, at the time of such delivery, have declared them to be respectively of higher value than as above mentioned ; in which case it shall be lawful for such company to demand and receive by way of compensation for the increased risk and care thereby occasioned, a reasonable percentage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge ; and such percentage or increased rate of charge shall be notified in the manner prescribed in the statute eleventh George Fourth and first William Fourth, chapter sixty-eight, and shall be binding upon such company in the manner therein mentioned : provided also, that the proof of the value of such animals, articles, goods, and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury : provided also, that no special contract between such company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as aforesaid, shall be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods, or things respectively for carriage : provided also, that nothing herein contained shall alter or affect the rights, privileges, or liabilities of any such company under the said act of the eleventh George Fourth and first William Fourth, chapter sixty-eight, with respect to articles of the descriptions mentioned in the said act.

VIII. This act may be cited for all purposes as "The Railway and Canal Traffic Act, 1854."

THE REGULATION OF RAILWAYS ACT, 1868.

31 & 32 VIC. CAP., 119.

Obligations and Liability of Companies as Carriers.

14. Where a company by through booking contracts to carry any animals, luggage, or goods from place to place partly by railway and partly by sea, or partly by canal and partly by sea, a condition exempting the company from liability for any loss or damage which may arise during the carriage of such animals, luggage, or goods by sea from the act of God, the King's enemies, fire, accidents from machinery, boilers, and steam, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature and kind soever, shall, if published in a conspicuous manner in the office where such through booking is effected, and if printed in a legible manner on the receipt or freight note which the company gives for such animals, luggage, or goods, be valid as part of the contract between the consignor of such animals, luggage, or goods, and the company, in the same manner as if the company had signed and delivered to the consignor a bill of lading containing such condition. For the purposes of this section the word "company" includes the owners, lessees, or managers of any canal or other inland navigation.

16. Where a company is authorized to build, or buy, or hire, and to use, maintain, and work, or to enter into arrangements for using maintaining, or working

steam vessels for the purpose of carrying on a communication between any towns or ports, and to take tolls in respect of such steam vessels, then and in every such case tolls shall be at all times charged to all persons equally and after the same rate in respect of passengers conveyed in a like vessel passing between the same places under like circumstances; and no reduction or advance in the tolls shall be made in favour of or against any person using the steam vessels in consequence of his having travelled or being about to travel on the whole or any part of the company's railway, or not having travelled or not being about to travel on any part thereof, or in favour of or against any person using the railway in consequence of his having used or being about to use, or his not having used or not being about to use, the steam vessels; and where an aggregate sum is charged by the company for conveyance of a passenger by a steam vessel and on the railway, the ticket shall have the amount of toll charged for conveyance by the steam vessel distinguished from the amount charged for conveyance on the railway.

The provisions of the Railway and Canal Traffic Act, 1854, so far as the same are applicable, shall extend to the steam vessels and to the traffic carried on thereby.

17. Where any charge shall have been made by a company in respect of the conveyance of goods over their railway, on application in writing within one week after payment of the said charge made to the secretary of the company by the person by whom or on whose account the same has been paid, the company shall within fourteen days render an account to the person so applying for the same, distinguishing how much of the said charge is for the conveyance of the said goods

on the railway, including therein tolls for the use of the railway, for the use of carriages, and for locomotive power, and how much of such charge is for loading and unloading, covering, collection, delivery, and for other expenses, but without particularizing the several items of which the last mentioned portion of the charge may consist.

18. Where two railways are worked by one company, then in the calculation of tolls and charges for any distances in respect of traffic (whether passengers, animals, goods, carriages or vehicles) conveyed on both railways, the distances traversed shall be reckoned continuously on such railways as if they were one railway.

MODE OF COMPUTING TOLLS.

NOTE TO PAGE 43.

[It may add to the utility of this work to state by way of note, rather more fully than was necessary in the text the actual method adopted by railway companies in computing and arranging their tolls.]

The special act of each company contains a list, in somewhat general terms, of the tolls that may be charged for different classes of goods and animals conveyed over the line of railway to which the act refers.

This list states the maximum tolls the company *may* charge, but does not indicate precisely the charge actually made by the company. Practically the classification of goods for the purposes of toll is regulated by "the Railway Clearing House Classification." A conference of the Railway Clearing House is held from

time to time, for the revision of tolls and other purposes, composed of the following representatives of railway companies, who are members of the Clearing House, viz. :—(1) The council of delegates, comprising one director elected by and from each railway, (2) the general managers of railways, and (3) the goods managers and coaching superintendents. At this conference "The Clearing House Classification," embracing all articles of commerce, is compiled and from time to time, according to the exigencies of traffic, revised and amended by the goods managers and coaching superintendents. The classification is made without reference to the Act or Acts of Parliament of any particular railway, but having in view only a consideration of the circumstances which influence the cost of transportation; including in class 1 merchandise of a bulky character, but not liable to damage and for which the lowest rate of toll is charged, and in class 2 articles of less bulk and more subject to damage, for which a higher rate is charged: and so on through each of the respective classes for the time being in force with the Clearing House. This classification having been approved by the general managers is issued to the companies who are members of the Clearing House. The goods managers of each railway then compile (or revise) a list of their respective tolls in the following manner:—They look to the articles comprised in, say, class 1 of the classification, and consider at what rate per ton per mile these articles may (looking to the nature of the district and traffic) be charged between particular stations. They then calculate what this will amount to between, say stations A. and B., add certain charges for cartage, and insert the sum in a station

book to be furnished to, say, station A. in a column headed class 1, as the charge to be made for articles within class 1 of the classification between A. and B. In making this calculation goods managers refer to the Acts of Parliament in force over the particular portion of the railway with which they are dealing in order to prevent this charge for articles in class 1 of the Clearing House Classification exceeding what may by the said acts be charged between A. and B. for any of such articles in whatever class it may be placed in the said acts. The same process is adopted as respects articles in the various classes and the various stations to which they are to be carried. If in any case the charge exceeds that to which the company are entitled under their special act, the excess of charge may be recovered from the company, otherwise they will be bound by the rate so fixed upon, however much below the charge to which they are entitled under their special act.

INDEX.

A.

- ACCESSORIAL ARTICLES,**
liability of company for, under Carriers' Act, 16.
- ACT OF GOD,**
defined, 2.
company not liable for loss occasioned by, 2.
unless they have not made reasonable preparations to guard
against it, 87.
- ACTION,**
company liable to, for refusing to receive goods, 20.
for refusing to carry, tender of toll not necessary to sup-
port, 42.
for loss of goods, who may bring, 100.
- ADVERSE CLAIMANTS.** SEE INTERPLEADER.
- ANIMALS,**
company's liability for loss of or injury to, 18.
for self-inflicted injuries to, 65.
- ARTICLES,**
if mutually injurious not to be stowed together, 66.

B.

- BYE-LAWS,**
power of company to make, for regulation of traffic, 29

C.

- CARRIERS' ACT,**
Appendix, 102.
articles within, what are, 10.
a question of fact, 16.
must exceed £10 in value, 12.
exemption of company from liability for loss
or injury to, 10.
unless nature and value declared and extra
charge paid, 12.
list of extra charges to be affixed in booking office, 13.
declaration by consignor must be made in any event,
although no notice of increased charge be affixed, 13, and
note.

CARRIERS' ACT—(continued).

- company liable after declaration, though increased rate not demanded, 14.
- declaration must be express and not inferential, 17.
- protects from actual and not consequential loss, 16.
 - gross negligence if act not complied with, 15.
- but not from the felonious acts of company's servants, 15.
- applies only to loss of goods during land transit, 2.
- liability under, when parcel contains goods some within the act and some not, 16.
- actual and not declared value recoverable under, when goods are lost, 93.

CATTLE,

- limitation in amount of company's liability for damage to, 18.

CHARGES. See TOLLS—TERMINAL CHARGES.

- particulars of, to be furnished on application to company's secretary, 62.
- excessive, may be recovered back, 44, 59.

COMMON CARRIERS,

- railway companies are, 1.
- but only as to articles professedly carried, 20.

CONDITIONS,

- of a special contract must be reasonable, 32.
- reasonableness of, depends on attendant circumstances, 34.
- if one unreasonable, it vitiates the set, 32.
- held reasonable, 34.
- held unreasonable, 39.
- unreasonable, good if a reasonable alternative, 38.
- result of the decisions on, 41.

CONSIGNEE,

- refusing goods, company should protect rights of the owner, 79.
- when dead or cannot be found, 81.

CONTRACT. See SPECIAL CONTRACT.

- ordinary, what amounts to, 30.
- express, as to time of delivery, must be complied with, 81.

D.**DAMAGES,**

- for goods lost or injured, 94,
 - within the Carriers' Act, 93.
 - partially lost or deteriorated, 95.
- real and not fancy value, allowed, 95.

G

DAMAGES—(continued).

for loss of business, 99.
market, 95.
profits, 96.
season, 98.
wages, 98.

for refusing to carry, 99.

DANGEROUS ARTICLES,

company not bound to carry, 22.
nature of, must be distinctly stated, 23.
penalty for sending, without declaring, 22.

**DECLARATION. See CARRIERS' ACT—RAILWAY & CANAL
TRAFFIC ACT.****DEFECTIVE PACKING,**

will not excuse loss, 89.

DELAY,

in delivering goods when company liable for, 16, 82.
caused by unusual influx of business, 83.

DELIVERY TO COMPANY,

what amounts to, 7.
liability attaches on, 7,
but only to goods intended for immediate transit, 9.
consent necessary to, 8.
goods need not be entered on a way bill to constitute, 9.

DELIVERY TO CONSIGNEE,

determines company's liability, 73.
what amounts to, 72.
by common law, should be at the place to which goods are
directed, 74.
should be within reasonable hours, 74.
when not necessary, notice of arrival of goods should be
given, 75.
right to, may be waived, 76.

DETERIORATION,

natural, company not liable for, 64.

DILIGENCE,

to be used in transit of goods, 64.

DISADVANTAGE. See UNDUE PREFERENCE.**DUTY,**

of company to receive from and carry for all persons alike, 19
when goods refused by consignee, 79.
when consignee cannot be found, 81.

F.**FACILITIES. See UNDUE PREFERENCE.**

FELONY,

of servants, company liable for, 15.

FORFEITURE,

for sending dangerous goods undeclared, 22.
nitro-glycerine undeclared, 23.

FRAUD,

of customer, company not liable for loss resulting from, 88.
signature to special contract obtained by, is void, 33.

G.

GENERAL LIEN. See **LIEN.**

GROSS NEGLIGENCE,

when company liable for, 15.

H.

HIRE. See **TOLL.**

HORSES,

limitation in amount of company's liability for damage to,
18.

I.

INJUNCTION,

to restrain undue preference, 26.
when granted, 60.
court will not grant to restrain overcharge, 59.

INSURERS,

companies are, of goods entrusted to them, 4.

INTERPLEADER,

lies in case of adverse claims, 69.

K.

KING'S ENEMIES,

defined, 2.

L.

LEAKAGE,

when company liable for, 65.

LIABILITY,

of companies at common law, 1
as modified by Carriers' Act, 2.
by Railway and Canal Traffic Act, 3.
by 31 & 32 Vic. 32, 3.
by special contract, 4.

LIABILITY—(*continued*).

- duration of, 72.
- continues to the destination, 5, 78.
- unless restricted by special contract, 6, 78.
- duration of, when company not bound to deliver at consignee's residence, 75.

LIEN,

- companies have, on goods carried, 89.
- general, by statute, 90.
- on goods stopped in the transit, 91.
- company may sell goods detained for, 92
- but not use them, 92.
- right of, only extends to goods in their possession as carriers, 92.

LOSS. See DAMAGES.

- meaning of, within Carriers' Act, 16.
- when company not liable for, 2, 86.
- reasonable efforts must be used to avoid, 87.
- defective packing will not excuse, 89.

M.**MARKET,**

- loss of, (*See damages*).

MILEAGE RATE,

- may be charged, though goods not conveyed by shortest route, 43.

MILESTONES,

- must be put up, 44.

MISCONDUCT,

- of customer, exempts company from liability, 88,
- of third party, does not, 88.

N.**NITRO-GLYCERINE,**

- company not bound to receive, 23.
- penalty for sending, without notice to company, 23.

NON-DELIVERY,

- evidence of, 85
- what excuses, 86.

NOTICE,

- general, will not limit common law liability of companies, 5
- of extra charges under Carriers' Act to be affixed in booking office, 18.
- of the arrival of goods should be given to consignee, 75.

NOTICE—(continued).

- of refusal of consignee to accept, need not be given to consignor, 79.
- constructive, sufficient to fix company with liability for loss of market, 96.
- actual, necessary to attach liability for loss of profit, 96.

O.**OBSTRUCTION,**

- of traffic, company not liable for delay resulting from, 83.

OVERCHARGE,

- may be recovered by action, 59.
- injunction to restrain when not granted, 59.

OWNER,

- person who delivers goods to be treated as, 67.
- unless a superior claimant assert his title, 67.

P.**PACKED PARCELS,**

- company bound to carry, 24.
- and at same rates as similar goods are charged to other parties, 58.
- company no right to open, 59.
- damages for refusal to carry, 99.
- unreasonable condition as to, 41.

PACKING,

- imperfect, ground for refusing goods, 22.
- but will not excuse their loss, 89.

PARCELS,

- suspected may be opened, 23.
- company no general right to open, 24.

PERISHABLE ARTICLES,

- duty of company towards, when detained for lien, 92.

PIGS,

- limitation in amount of company's liability for damage to, 18.

POSSESSION,

- by consignee, determines company's liability, 77.
- right to stop in transitu, 70.

R.**RAILWAY COMPANIES,**

- are common carriers, 1.

RAILWAY AND CANAL TRAFFIC ACT, 1854.**Appendix 108.**

- liability for loss or injury to animals, limited by, 17.

